CLACKAMAS
COUNTY

BOARD OF COUNTY COMMISSIONERS

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

AGENDA

Thursday, June 7, 2012 - 10:00 AM
Board of County Commissioners Business Meeting

Beginning Board Order No. 2012-42

I. CALL TO ORDER
- Roll Call
- Pledge of Allegiance
- Approval of Order of Agenda

II. PRESENTATION *(Following are items of interest to the citizens of the County)*

1 1. Proclaiming June 2012 as Royal Rosariains Month in Clackamas County (Rob Hungerford, Water Environment Services)

III. CITIZEN COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the hearing. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

IV. READING AND ADOPTION OF PREVIOUSLY HEARD ZDO ORDINANCE *(No public testimony on this item)*

2 1. ZDO-234 - An Ordinance Amending Sections 202, 401, 406, 407, 834, 902 and 1204, of the Clackamas County Zoning and Development Ordinance, Previously Approve at the May 16, 2012 Public Hearing (Rhett Tatum, County Counsel)

V. PUBLIC HEARINGS *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

3 1. Board Order No. _____ Amending the Clackamas County Local Contract Review Board Rules (David Anderson, County Counsel)

4 2. First Reading of Ordinance No. _____ Amending Certain Sections of the Ordinance of the Tri-City Service District Relating to Industrial Pretreatment (Chris Storey, County Counsel)

VI. DISCUSSION ITEMS *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

~NO DISCUSSION ITEMS SCHEDULED

VII. CONSENT AGENDA *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Study Session. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

A. Health, Housing & Human Services

5 1. Approval of an Agency Service Contract with Family Stepping Stones for Therapeutic Early Childhood and Development Program Services - CFY

6 2. Board Order No. _____ Approving the Mental Heath Director's Designees to Authorize a Custody Hold Under *ORS 426.233* - BH

B. Department of Transportation & Development

7 1. Approval of an Amendment to the Intergovernmental Agreement with Metro to Provide Funds for Staff Time to Plan and Implement Organics Collection

8 2. Approval of a Contract with K&E Excavating, Inc. for the Bear Creek, Barnards Road, Culvert Replacement Project - Fin

C. Elected Officials

9 1. Approval of Previous Business Meeting Minutes – BCC

10 2. Approval to Apply for the 2012-2014 Victims of Crime Act, Competitive Project Grant for the Clackamas County District Attorney's Office

VIII. COUNTY ADMINISTRATOR UPDATE

IX. COMMISSIONERS COMMUNICATION

NOTE: ***Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.***

http://www.clackamas.us/bcc/business/

Proclaiming June 2012 as Royal Rosarian Month in Clackamas County

***Whereas**, the Royal Rosarians were founded 100 years ago on June 17, 1912, by local business leaders with the purpose of supporting and promoting the Rose Festival, encouraging the cultivation of roses, and hosting out-of- town visitors to the greater Portland-metropolitan community; and*

***Whereas**, the Royal Rosarians are the Official Greeters and Ambassadors of Goodwill for the Rose Festival, proclaiming the Rose to be the Queen of Flowers; and*

***Whereas**, the Royal Rosarians are readily recognized in their distinctive white double-breasted suits and straw hats, a hallmark of pageantry throughout Oregon and the Rose Festival; and*

***Whereas**, the Royal Rosarians serve as the Royal Guard for the mythical Realm of Rosaria, that place in everyone's heart that awakens as the storm clouds of winter yield to the golden rays of Spring when the lovely rosebud begins to blossom into its magnificent glory; and*

***Whereas**, the Royal Rosarians are a completely voluntary organization composed of tireless men and women dedicated to extolling the beauty of the rose and performing over 22,000 hours of community service every year; and*

***Whereas**, the Royal Rosarian Foundation supports programs that assist children-at-risk, provides music scholarships, and honors citizen heroes and heroines at the annual Newsmakers Banquet; and*

***Whereas**, Clackamas County boast its own Royal Rosarian, County Employee Rob Hungerford who is the Prime Minister for the 2012 Rose Festival.*

***Now, therefore**, the Clackamas County Board of Commissioners do hereby proclaimed June 2012 as Royal Rosarian Month in Clackamas County and encourage the citizens of Clackamas County to enjoy the many events the Rose Festival has to offer.*

***Dated** this 7th day of June, 2012.*

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

_____

Chair

ORDINANCE NO. ZDO-234

An Ordinance amending Sections 202, 401, 406, 407, 834, 902 and 1204, of the Clackamas County Zoning and Development Ordinance

WHEREAS, on December 6, 2011, the Board of County Commissioners directed the Planning and Zoning Division staff to prepare draft language for consideration of amendments to the Zoning and Development Ordinance to include administrative provisions related to the three natural resource zoning districts: Exclusive Farm Use, Timber and Ag/Forest; and

WHEREAS, the Planning Director initiated an amendment to the natural resource zoning district provisions of the Zoning and Development Ordinance, in response to inconsistencies between those provisions and current state law; and

WHEREAS, an on-going process of amendments to the Zoning and Development Ordinance is necessary to clarify provisions and maintain consistency throughout the Ordinance and respond to changes in statutes and public input; and

WHEREAS, it is a policy of the Board of County Commissioners to provide excellent public service to citizens and the development community, streamline permitting processes, encourage sound land use and development and improve the Zoning and Development Ordinance as necessary; and

WHEREAS, the proposed amendments are consistent with the Clackamas County Comprehensive Plan, and state and federal law; and

WHEREAS, after a duly-noticed public hearing, the Clackamas County Planning Commission recommended approval of ZDO-234 on April 9, 2012; and

WHEREAS, the Board of County Commissioners held a public hearing on May 16, 2012, and directed staff make revisions to the proposed draft, which staff has done;

WHEREAS, the Board of County Commissioners believes immediate adoption of the proposed amendments is warranted; now therefore;

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Sections 202, 401, 406, 407, 834, 902 and 1204 of the Clackamas County Zoning and Development Ordinance are hereby amended as shown in Exhibit A hereto.

Section 2: This ordinance shall be effective immediately.

ADOPTED this 7th day of June, 2012

BOARD OF COUNTY COMMISSIONERS

_____

Chair

_____

Recording Secretary

Ordinance ZDO-234

Zoning and Development Ordinance Amendments

Text to be added is underlined. Text to be deleted is ~~struck through~~.

202 DEFINITIONS

ACCESSORY BUILDING OR USE: A subordinate building or use, the use of which is clearly incidental to that of the main building or use on the same lot.

ACCESSWAY: A public right-of-way, a portion of which is hard surfaced, for use by pedestrians and bicyclists providing a direct route where public roads require significant out of direction travel.

ACCESS DRIVE: A private way, with a travel surface generally no more than ~~twelve (~~12~~)~~ feet~~ft.~~ in width, created by deed or easement to provide vehicular ingress to, or egress from not more than two ~~(2)~~ lots or parcels.

ACTIVE RECREATIONAL AREA: An area such as a park, sports field, or golf course, where turf provides a playing surface that is dedicated to active play.

ADJOINING: Contiguous or abutting exclusive of street width. It shall include the terms adjacent, abutting or contiguous.

ADULT BUSINESS: A range of commercial activities characterized by live, closed circuit, or reproduced material which has an emphasis on nudity and/or specified sexual activity. Such businesses generally limit their patrons to persons at least 18 years of age. Adult businesses include the following types of establishments: adult bookstores, adult theaters, adult arcades, adult cabarets, and adult paraphernalia shops, as defined below, and other establishments which feature any combination of activity or merchandise described below which collectively account for ~~twenty-five (~~25~~)~~ percent, or more, of the establishment's activity or merchandise. These definitions shall not be construed to allow uses or activities which are unlawful under State criminal laws.

"Adult bookstore" is an establishment having as ~~twenty-five (~~25~~)~~ percent or more of its merchandise for sale, rent, or viewing on the premises, such items as books, magazines, other publications, films, video tapes or video discs which are distinguished by their emphasis on specified sexual activities, as defined in this ordinance.

"Adult theater" is an establishment used for more than ~~twenty-five (~~25~~)~~ percent of showtime for presenting material (either live, closed circuit, or prerecorded) for

observation by patrons therein which has as a dominant theme an emphasis on nudity and/or specified sexual activities, as defined in this ordinance.

"Adult arcade" is an establishment offering viewing booths or rooms for one or more persons in which ~~twenty-five (25)~~ percent, or more, of the material presented (either live, closed circuit, or reproduced) is characterized by an emphasis on nudity and/or specified sexual activities, as defined in this ordinance.

"Adult cabaret" is an establishment having as its primary attraction live exhibitions (either for direct viewing, closed circuit viewing, or viewing through a transparent partition) for patrons, either individually, or in groups, where the exhibition material presented is characterized by an emphasis on nudity and/or specified sexual activities, as defined in this ordinance.

"Adult paraphernalia shop" is an establishment having as ~~twenty-five (25)~~ percent or more of its merchandise objects which stimulate human genitalia and/or objects designed to be used to substitute for or be used with human genitalia while engaged in specified sexual activities, as defined in this ordinance.

AGRICULTURAL AIRSTRIP: An area designated by the user solely for the purpose of providing for temporary or occasional landings and takeoffs by aircraft engaged in aerial application of chemicals, fertilizers, or other substances to agricultural or forest lands.

AIRPORT, PERSONAL-USE: An airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by his invited guests, and to commercial activities in connection with agricultural operations only.

AIRPORT, PRIVATE USE: An airport restricted, except for aircraft emergencies, to use by the owner and his invited guests. The determination as to whether an airport is private or public-use is made by the Oregon Department of Aviation.

AIRPORT, PUBLIC-USE: An airport that is open to use by the flying public, with or without a request to use the airport.

ALLEY: Any public space or thoroughfare less than 16 feet but not less than 10 feet in width which has been dedicated or deeded to the public primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

ALTERATION, CULTURAL RESOURCE: Any exterior change or modification, through public or private action, of any cultural resource or of any property located within an historic district including, but not limited to, exterior changes to or modification of structure, architectural details or visual characteristics such as paint color and surface texture, grading, surface paving, new structures, cutting or removal of trees and other natural features, disturbance of archaeological sites or areas, and the placement or removal of any exterior objects such as signs, plaques, light fixtures, street furniture, walls, fences, steps, plantings and landscape accessories affecting the exterior visual qualities of the property.

ANTIQUES: Goods that, by virtue of their age or unusual quality, are generally considered to be of historical and/or artistic interest, ordinarily such items are in good state of preservation or are restorable to their original conditions.

ARCHITECTURAL FEATURES: Features include, but are not limited to cornices, canopies, sunshades, gutters, chimneys, fireplaces, flues and eaves. Architectural features shall not include any portion of a structure built for the support, occupancy, shelter or enclosure of persons or property of any kind.

ARCHITECTURAL FEATURES, CULTURAL RESOURCE: The architectural elements embodying style, design, general arrangement and components of all of the outer surfaces of an improvement, including, but not limited to, the kind, color, texture of the building materials and type and style of all windows, doors, lights, signs and other fixtures appurtenant to such improvements.

AUTOMATIC IRRIGATION CONTROLLER: An automatic timing device used to remotely control valves that operate an irrigation system. Automatic irrigation controllers schedule irrigation events using either evapotranspiration (weather-based) or soil moisture data.

BABYSITTER: A~~ny~~ person who goes into the home of a child to give care during the temporary absence of the parent or legal guardian or custodian.

BASEMENT: A portion of a building which has less than one-half ~~(1/2)~~ of its height measured from finished floor to finished ceiling above the average elevation of the adjoining ground, but not an "underground structure" as defined in this ordinance.

BEACON: Any light with one or more beams directed into the atmosphere or directed at one or more points not on the same site as the light source; also, any light with one or more beams that rotate or move.

BED AND BREAKFAST ESTABLISHMENT: A use carried on in a structure designed for a single-family dwelling, except as provided under Section 832, which provides rooms for rent on a daily basis to the public and which includes a breakfast meal as part of the cost of the room. Bed and breakfast establishments do not include other similar uses, such as motels, health or limited care facilities, boarding houses, group quarters, hostels, or rescue missions. All bed and breakfast establishments require tourist facility licensing by the appropriate agency. Bed and breakfast residences and inns, as defined below, must also satisfy the State Health Division requirements. Three levels of bed and breakfast establishments are as follows:

> "Bed and Breakfast Homestay" provides overnight accommodations plus breakfast in an owner-occupied dwelling that provides one or two~~1-2~~ guest rooms for occasional bed and breakfast guests, not exceeding five~~5~~ guests at one time. Primary use of the dwelling remains as a dwelling, not as a lodging establishment. All reservations are made in advance. Income derived from bed and breakfast activity does not generally represent a primary source of income. Bed and breakfast homestays are major home occupations, subject to Section 822.

"Bed and Breakfast Residence" provides overnight accommodations plus breakfast and occasional family-style meals for guests, in an operator- or owner-occupied dwelling that provides up to five~~5~~ rooms on an occasional or regular basis. Income derived from the bed and breakfast activity may represent a primary source of income. Bed and breakfast residences are subject to Section 832, and all requirements of the underlying district.

"Bed and Breakfast Inn" provides accommodations plus breakfast on a daily or weekly basis in an operator- or owner-occupied dwelling that is primarily used for this purpose. This use is operated as a commercial enterprise, encourages direct bookings from the public, and is intended to provide a major source of income to the proprietors. This level includes inns that operate restaurants offering meals to the general public as well as to overnight guests. Bed and breakfast inns are subject to Section 832 and all requirements of the underlying district.

BICYCLE RACK: An apparatus designed to support the central frame of a bicycle and allow locking of both wheels, without the removal of wheels.

BIKEWAY: A paved facility provided for use by cyclists. There are five types of bikeways.

Shared Roadway: A type of bikeway where motorists and cyclists occupy the same roadway area. Shared roadways are allowed on neighborhood streets and on rural roads and highways.

Shoulder Bikeway: A bikeway which accommodates cyclists on paved roadway shoulder.

Bike Lane: A section of roadway designated for exclusive bicycle use, at the same grade as the adjacent roadway.

Bike Path: A bike lane constructed entirely separate from the roadway.

Cycle Track: An exclusive "grade-separated" bike facility elevated above the street level using a low-profile curb and a distinctive pavement material.

BLANKETING: The visual blocking of one sign by another as seen by a motorist traveling a street or highway.

BLOCK: A parcel of land bounded by streets, railroad rights-of-way, waterways, parks, unsubdivided acreage, or a combination thereof.

BUILDING: Any structure used or intended for supporting or sheltering any use or occupancy.

BUILDING ENVELOPE: The three dimensional space which is to be occupied by a building.

BUILDING LINE: A straight line that is parallel and adjacent to the front side of the main building and parallel to the front lot line.

BUILDING OR STRUCTURE HEIGHT: The term "height of building" shall be calculated by the methods identified in the State of Oregon Structural Specialty Code or the State of Oregon One and the Two Family Dwelling Specialty Code, as applicable.

BULK PLANT: Hazardous substances at the bulk plant level are manufactured, collected, repackaged, stored, or distributed, but are generally not used on the site. The primary emphasis of uses at the bulk plant level is on hazardous substances. Materials are stored in large permanent tanks. Bulk plant quantities are larger than amounts transported in or out in any single shipment. Processors of hazardous substances will generally be at this level. Uses which produce hazardous substances as a by-product or accessory to another product are not in this category.

CARE: The provision of room and board and other services as needed to assist in activities of daily living, such as assistance with bathing, grooming, eating, medication management, money management or recreation.

COGENERATION FACILITY: A facility that produces energy as a by-product of its normal industrial process and the energy produced can be used for industrial, commercial, heating or cooling purposes; and such facility is more than 50 percent owned by a person who is not a public utility, an electric utility holding company or an affiliated interest. When this definition differs from that in ORS 758.500, the definition in ORS 758.500 shall prevail.

COMMERCIAL USE: The use of land and/or structures for the conduct of retail, service, office, artisan, restaurant, lodging, daycare, entertainment, private recreational, professional, and similar uses.

COMMON OWNERSHIP: Land commonly owned to include open space lands dedicated in planned unit developments and lands dedicated for open space which are owned by homeowners associations.

COMPOSTING: The managed process of controlled biological decomposition of green feedstocks. It does not include composting for the purposes of soil remediation.

COMPOSTING FACILITY: A site or facility, excluding home composting areas as described in Section 202 and agricultural composting conducted as a farm use, which utilizes green feedstocks to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Vermiculture and vermicomposting are considered composting facilities. Composting facilities or sites may include sales of the finished product, as well as accessory products limited to topsoil, barkdust and aggregate commonly used in landscaping to wholesale and retail customers. The area utilized for the sale of said accessory products shall not exceed 10% of the area used

for composting, or two (2) acres, whichever is less subject to the provisions of Subsection 834.03 and 834.04.

CONDITIONAL USE: A use addressing a limited or specific need but generally secondary to a primary use and, due to a potential adverse effect upon primary uses or public services and facilities, is only allowed subject to review and the use standards of the district and Section 800 and the criteria of Section 1203.

CONGREGATE HOUSING FACILITY: A building that contains more than one dwelling unit and provides common facilities and services for residents who require or desire a more supportive living environment than typically afforded to residents in multifamily, three-family, two-family, or single-family dwellings. Regular on-premise supervision by a registered physician, registered nurse, or other health care provider may be included.

CULTURAL RESOURCE: Improvements, buildings, structures, signs, features, sites, places, areas or other objects of scientific, aesthetic, educational, cultural, architectural, or historical significance to the citizens of the county.

CULTURAL RESOURCE INVENTORY: The official list of designated cultural features, sites, districts subject to the provisions of Section 707, Cultural Resources.

CULTURAL RESOURCES OBJECT: A material thing of functional, aesthetic, cultural, symbolic or scientific value, usually by design or nature movable.

DAYCARE FACILITY: A facility that provides regular daycare services to children under 13 years of age, including a day nursery, nursery school group, or similar unit operating under any name. A daycare facility shall not include services provided by a physician or nurse, or facilities operated primarily for education or supervised training or instruction, or daycare provided by a "babysitter" or "family daycare provider" ~~as defined in this Section~~. ~~A daycare facility caring for seven or more children shall satisfy the certification requirements of the Children's Services Division.~~

DEDICATION: The designation of land by its owner for any general or public use.

DESIGNATED SITE (historic site, cultural resource site, landmark site): A parcel or part thereof on which a cultural resource is situated, and any abutting parcel or part thereof constituting part of the premises on which the cultural resource is situated, and which has been designated pursuant to this Ordinance.

DESIGNATED STRUCTURE (landmark, cultural resource, historic structure): Any improvement that has special historical, cultural, aesthetic or architectural character, interest or value as part of the development, heritage or history of the county, the State of Oregon, or the nation and that has been designated pursuant to this ordinance.

DIRECT ROUTE: The shortest reasonable route between two points. A route is considered direct if it does not involve significant out of direction travel that could be

avoided. Out of direction travel is significant if it is more than 50 percent~~%~~ longer than the straight line between two points.

DISTINCTIVE URBAN FOREST: Forested or woodland areas which are visually prominent or contain unique or rare tree and plant communities. These areas are usually found in association with other open space resources within the urban area.

DRIP IRRIGATION: Any non-spray low volume irrigation system utilizing emission devices with a flow rate measured in gallons per hour.

DRIP LINE: The outermost edge of a tree's canopy; when delineating the drip line on the ground, it will appear as an irregularly shaped circle defining the canopy's perimeter.

DROUGHT-TOLERANT PLANTS: Plants that will survive in the typical or somewhat less than typical amount of rainfall in the Willamette Valley, and therefore require very little or no supplemental water once established.

DWELLING: A building, or portion thereof, which contains one or more dwelling units. A dwelling may be a residential trailer or a manufactured dwelling but not a recreational vehicle.

DWELLING, ATTACHED SINGLE-FAMILY: A building, or portion thereof, that contains only one dwelling unit; shares at least one wall, or portion thereof, with another attached single-family dwelling; and is located on a separate lot of record from any other dwelling, except where otherwise permitted for an accessory dwelling unit. A manufactured dwelling or residential trailer is not an attached single-family dwelling.

DWELLING, DETACHED SINGLE-FAMILY: A building, or portion thereof, that contains only one dwelling unit and is detached from any other dwelling, except where otherwise permitted for an accessory dwelling unit. A manufactured dwelling or residential trailer is not a detached single-family dwelling.

DWELLING, MULTIFAMILY: A building, or portion thereof, that contains four or more dwelling units.

DWELLING, THREE-FAMILY: A building, or portion thereof, that contains three dwelling units.

DWELLING, TWO-FAMILY: A building, or portion thereof, that contains two dwelling units, both of which are located on the same lot of record. If one of the two dwelling units is an accessory dwelling unit, the building, or portion thereof, is not a two-family dwelling.

DWELLING UNIT: A building, or portion thereof, with one or more rooms designed for residential occupancy by one family.

DWELLING UNIT, ACCESSORY: A dwelling unit located on the same lot of record as a primary dwelling. The primary dwelling may be an attached or detached single-family dwelling, as specified in the underlying zoning district provisions.

EASEMENT: A right of usage of real property granted by an owner to the public or to specific persons, firms, and corporations.

EDIBLE GARDEN: A garden that contains plants that produce food for human consumption.

ELECTRIC VEHICLE CHARGING STATION: A location where a vehicle can plug into an electrical source to re-charge its batteries.

FAMILY: Any individual or group of persons, regardless of relationship but not exceeding 15 persons, living together as a single housekeeping unit within a dwelling unit.

FAMILY DAYCARE PROVIDER: A daycare provider who regularly provides daycare to 16 or fewer ~~than 13~~ children, or as amended by ORS 657A.440, including the children of the provider, regardless of full-time or part-time status, in the provider's home in the family living quarters. Provision of daycare to ~~13 or~~ more than 16 children, including the children of the provider, regardless of full-time or part-time status, in the provider's home in the family living quarters~~of the provider~~ shall constitute the operation of a "daycare facility~~,~~" ~~as defined in this section,~~ and shall be subject to the requirements of this Ordinance for daycare facilities. ~~A family daycare provider to seven or more children shall satisfy the certification requirements of the Children's Services Division.~~

~~FARM, COMMERCIAL: A farm unit with all of the following characteristics:~~

~~A. The land is used for the primary purpose of obtaining a profit in money from activities described in Sections 401.04(A);~~

~~B. The net income derived from farm products is significant; and~~

~~C. Products from the farm unit contribute substantially to the agricultural economy, to agricultural processors and to farm markets.~~

~~FARM, NONCOMMERCIAL: A parcel where all or part of the land is used for production of farm products for use or consumption by the owners or residents of the property, or which provides insignificant income.~~

~~FARM OPERATOR: A person who resides on and actively manages a "farm unit".~~

~~FARM UNIT: The contiguous and noncontiguous tracts within the county or a contiguous county held in common ownership and used by the farm operator for farm use as defined in 401.03(B).~~

FARMERS' MARKET: An organized seasonal outdoor market dedicated to the direct sales by growers of agricultural goods, including plants, produce, meats, and other animal products (e.g. eggs, cheese, honey).

~~FARMWORKER: Any person who, for an agreed remuneration or rate of pay, performs temporary or permanent labor for another in production of farm products or in the planting, cultivating or harvesting of seasonal agricultural crops or in reforestation of lands, including but not limited to, the planting, transplanting, tubing, pre-commercial thinning, and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.~~

~~FARMWORKER HOUSING: Housing limited to occupancy by farmworkers and their immediate families and no dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.~~

FEE-IN-LIEU OF LAND: Payment made instead of a land donation to satisfy a particular development requirement, such as park lands or school sites.

FINAL SUBDIVISION (plat): The Plat of a plan, subdivision, dedication or any portions thereof, approved and prepared for filing for record with the County Clerk and containing those elements and requirements as set forth in this Ordinance and as required by State statute.

FLAG: Any fabric, banner, or bunting containing distinctive colors, patterns, or symbols.

FLAG LOT: A lot or parcel which has access to a road, street or easement, by means of a narrow strip of lot or easement.

FLEX SPACE: A building constructed to accommodate a variety of commercial, office and/or light industrial uses, including: administration, direct and telephone sales, back-office operations, product assembly, component and inventory warehousing, shipping and related or similar activities.

FLOOR AREA: The area included within the surrounding exterior walls of a building or portion thereof, exclusive of porches and exterior stairs, multiplied by the number of stories or portion thereof. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. Floor area shall not include portions of buildings used for parking of vehicles, except the square footage of commercial uses in parking structures can be counted as part of the total floor area.

FLOOR AREA RATIO (FAR): A measurement of density expressed as the ratio of square footage of building floor area to the square footage of the net site area. The greater the ratio, the greater the density. For example, a building occupying one-fourth of the net site area has a FAR of .25: 1, or .25; adding a second floor to the same building increases the FAR to .50:1, or .5.

FRATERNITY OR SORORITY HOUSE: A building occupied by and maintained exclusively for students affiliated with a school or college.

GRADE: The line of the street or ground surface deviation from the horizontal.

GREEN FEEDSTOCKS: Are defined as including yard debris, non-treated wood waste, vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products, crop waste and livestock manure. For the purpose of these provisions, "non-treated wood waste" excludes wood waste treated with paint, varnish or other chemicals or preservatives.

GREEN ROOF: A vegetated roof designed to treat storm runoff.

GUEST HOUSE/STUDIO: A guest house or studio is a separate accessory structure, or portion thereof, which is built to residential (R-3 occupancy) building code requirements and which is used by members of the family residing in the primary dwelling or their nonpaying guests or employees on the premises. A "guest house" or "studio" shall be a temporary living area, and shall not be used for boarders or lodgers.

HARDSCAPES: In the practice of landscaping, refers to the inanimate, manmade, non-planted, outdoor areas where the soil is no longer exposed and that are surfaced with pervious or non-pervious durable materials such as masonry, wood, stone, paving, tile, or similar material to create patios, walkways, water fountains, benches, gazebos, etc.

HAZARDOUS SUBSTANCE, MATERIAL OR WASTE: Any hazardous substance, material or waste listed in the following federal regulations:

A. Superfund Amendments and Reauthorization Act (SARA) of 1986, Section 302 Extremely Hazardous Substances List (40 C.F.R 355, App. A and B);

B. Comprehensive Environmental Response Compensation & Liability Act Superfund (CERCLA) of 1980, Hazardous Substances List (40 C.F.R 302, Table 302.4);

C. SARA of 1986, Section 313, Toxic Chemicals List (40 C.F.R Section 372.65);

D. Resource Conservation and Recovery Act (RCRA) of 1976 and 1984 Amendments, Hazardous Wastes List (P & U Categories) (40 C.F.R Section 261.33(e) and (f)); and

E. DOT Hazardous Materials Table (49 C.F.R Part 172.101).

HISTORIC AREA: Any area containing improvements which have a special character, historical interest or aesthetic value or which represent one or more architectural periods or styles typical of the history of the County and which improvements constitute a distinct section of the County that has been designated a

cultural resource district pursuant to this ordinance.

HOME COMPOSTING: A composting area operated and controlled by the owner or person in control of a single family dwelling unit and used to dispose of vegetative waste, garden wastes, weeds, lawn cuttings, leaves and prunings generated from that property.

HOME OCCUPATION: An occupation or business activity which results in a product or service; is conducted, in whole or in part, in a dwelling and/or an accessory building normally associated with primary uses allowed in the underlying zoning district; is conducted by at least one family member occupying the dwelling; and is clearly subordinate to the residential use of the subject property. Home occupations do not include garage sales, yard sales, holiday bazaars, or home parties which are held for the purpose of the sale or distribution of goods or services unless such sales and/or parties are held more than six~~6~~ times in a calendar year or operate in excess of 24 total days in a calendar year.

HOMEOWNERS ASSOCIATION: The grouping or uniting of persons residing within a defined area, such as a subdivision, into an incorporated entity for the prosecution of a common enterprise.

HOSPITAL, ANIMAL: A building or premises for the medical or surgical treatment of domestic animals or pets, including dog, cat, and veterinary hospitals.

HOTEL: A building which is designed or used to offer short-term lodging for compensation, with or without meals, for six ~~(6)~~ or more people. A facility that is operated for the purpose of providing care beyond that of room and board is not a "hotel".

HOUSEKEEPING UNIT: A living arrangement within a dwelling unit in which a common kitchen facility, laundry facility, living and dining rooms, and other general living areas of the dwelling unit, and the duties, rights, and obligations associated with the performance of domestic tasks and management of household affairs, are shared by the residents by virtue of legal relationship or mutual agreement.

HYDROELECTRIC FACILITY: Any facility relating to the production of electricity by waterpower, including, but not limited to the power generating plant, associated dams, diversions, penstocks, navigation locks, fish ladders, fish screens, reservoirs and detention areas, recreation facilities, interconnecting transmission lines, substations, access roads, offices or commercial and industrial structures proposed to be built in connection with the energy facility; and activities involved in their construction and operation.

IMPROVEMENT: Any building structure, parking facility, fence, gate, wall, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

INDIRECT ILLUMINATION: A nonelectric sign illuminated by an indirect or

separate light source.

INDUSTRIAL USE: The use of land and/or structures for the manufacturing or processing of primary, secondary, or recycled materials into a product; warehousing and associated trucking operations; wholesale trade; and related development.

INSTITUTIONAL USE: The use of land and/or structures for activities such as daycare and pre-school facilities, public and private schools, colleges, universities, art, music, trade and other educational and training facilities, convalescent care facilities, nursing homes, hospitals, places of worship, fraternal lodges, municipal and civic buildings, transit centers and park-and-ride facilities, parks, swimming pools and other recreational facilities open to the public or a membership group, senior and community centers, libraries, museums, cemeteries and mausoleums, utility facilities, and similar public and private uses.

INVASIVE NON-NATIVE OR NOXIOUS VEGETATION: Plant species that are listed in the Oregon Department of Agriculture's Noxious Weed Policy and Classification System.

KENNEL: Any lot or premises on which four or more dogs, more than six months of age or with permanent canine teeth, are kept for purposes other than a veterinary clinic.

KIOSK: A small structure used as a newsstand, information booth, refreshment stand, bandstand, or display of goods, etc.

LANDSCAPING: Areas of land planted with groundcover, grasses, shrubs, annuals, perennials, or trees.

LIMITED USE: A use allowed in a district on a limited basis and subject to conditions specified therein which are generally more restrictive than the conditions placed on primary or accessory uses within the same district.

LIVESTOCK: One or more domesticated animals raised in an agricultural setting to produce commodities such as food, fiber, and labor. The term "livestock" includes miniature livestock, poultry, and farmed fish.

LOT: A unit of land created by a subdivision of land. For the purposes of this Ordinance, lot includes parcel and lot of record unless otherwise specified in the context of the specific provisions.

LOT AREA: The total horizontal area within the lot lines of a lot.

LOT, CORNER: A lot with street frontage on two streets intersecting at a corner of the lot. A lot within the radius curve of a single street is not a corner lot. A lot with access limited to, and frontage on, a state, County, public or private road and also with frontage on an intersecting private road or access drive is not a corner lot for the purpose of determining setbacks provided that the lot does not take access onto the

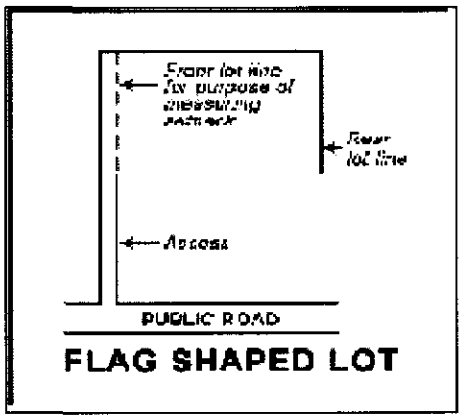
latter abutting private road or access drive. In such a case, the frontage on the latter private road or access drive shall be treated as a side lot line.

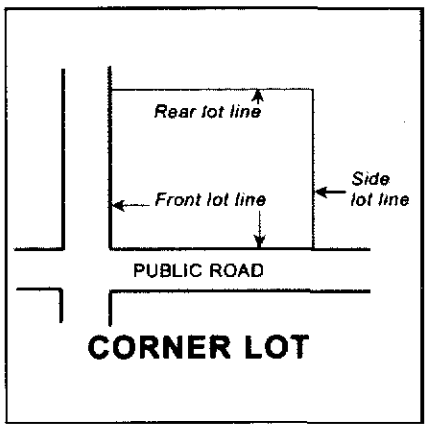
LOT COVERAGE: The area of a lot covered by a building or buildings expressed as a percentage of the total lot area.

LOT DEPTH: The "lot depth" is the mean horizontal distance between the front line and the rear lot line of a lot.

LOT, DOUBLE FRONTAGE: A lot with street frontage along two opposite boundaries. See also "LOT, REVERSE FRONTAGE" AND "LOT, THROUGH".

LOT LINE, FRONT: Any boundary line separating the lot from a County, public, state or private road, or access drive. Except as otherwise provided in Subsection 903.07 of this Ordinance, the front lot line of a flag lot, for the purpose of determining setbacks, shall be within the boundaries of the lot by a distance equal to the width of the narrow strip or easement providing access to the lot. The front lot line shall be parallel to the lot line extending from the road to the lot line opposite and most distant from the road. (See following illustration for flag shaped lot).





LOT LINE, REAR: Any boundary line opposite and most distant from the front lot line, and not intersecting a front lot line. In the case of a corner lot, the rear lot line shall be any one of the boundary lines opposite the front lot lines. Any other opposite boundary line shall be a side lot line (see illustration above for corner lot). In the case of a triangular-shaped lot, there shall be no rear lot line for setback purposes.

LOT LINE, SIDE: Any boundary line not a front or rear lot line.

LOT OF RECORD: A lot, parcel, other unit of land, or combination thereof, that conformed to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed or contract creating the lot, parcel or unit of land was signed by the parties to the deed or contract; except:

A. Contiguous lots under the same ownership when initially zoned shall be combined when any of these lots, parcels or units of land did not satisfy the lot size requirements of the initial zoning district, excluding lots in a recorded plat.

B. A unit of land created solely to establish a separate tax account, or for mortgage purposes, that does not conform to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed, tax account or contract creating it was signed by the parties to the deed or contract, unless it is sold under the foreclosure provisions of Chapter 88 of the Oregon Revised Statutes.

LOT, REVERSE FRONTAGE: A double-frontage lot for which the boundary along one of the streets is established as the rear lot line. The rear lot line of the lot shall be that boundary abutting a primary arterial, railroad right-of-way or other feature which shall preclude access. See also "LOT, DOUBLE FRONTAGE" AND "LOT, REVERSE FRONTAGE".

LOT, THROUGH: Lots, other than corner lots, that abut on two or more streets. See also "LOT, DOUBLE FRONTAGE" AND "LOT, REVERSE FRONTAGE".

LOT WIDTH: The "lot width" is the mean horizontal distance between the side lot lines of a lot measured within the lot boundaries.

LOT, ZONING: A "zoning lot or lots" is a single tract of land located within a single block, which (at the time of filing for a building permit) is designated by its owner or developer as a tract to be used, developed, or built upon as a unit under single ownership or control. Therefore, a "zoning lot or lots" may or may not coincide with a lot of record.

LOW VOLUME IRRIGATION: The application of irrigation water at low pressure through a system of tubing or lateral lines and low-volume emitters such as drip, drip lines, and bubblers. Low volume irrigation systems are specifically designed to apply small volumes of water slowly at or near the root zone of plants.

MAJOR TRANSIT STREET: Major transit streets, for the purpose of setting standards for orientation of development to transit, shall be those streets planned for High Capacity Transit and Primary Bus as shown on Comprehensive Plan Map V-6, and any other street that receives 20 minute or better service at the PM Peak traffic peak.

MAP: A final diagram, drawing or other writing concerning a major or minor partition.

MANUFACTURED DWELLING: A mobile home or manufactured home, but not a residential trailer or recreational vehicle.

MANUFACTURED HOME: A structure constructed on or after June 15, 1976, for a movement on the public highways that has sleeping, cooking and plumbing facilities, that is designed, intended to be and/or being used for human occupancy by a family for residential purposes, and constructed in accordance with Federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

MANUFACTURED HOME PARK: Any place where four or more manufactured homes are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent, lease or barter the use of such facilities. A manufactured home park does not include a lot or lots located within a subdivision.

MASTER PLAN: A sketch or other presentation showing the ultimate development layout of a parcel of property that is to be developed in successive stages or subdivisions. The plan need not be completely engineered but shall be of sufficient detail to illustrate the property's inherent features and probable development pattern.

MILL SITE, ABANDONED OR DIMINISHED: A mill, plant, or other facility engaged in the processing or manufacturing of wood products, including sawmills and facilities for the production of plywood, veneer, hardboard, panel products, pulp, and paper, that is located outside of urban growth boundaries; was closed after January 1, 1980, or has been operating at less than 25 percent of capacity since January 1, 2003; and contains or contained permanent buildings used in the production or manufacturing of wood products.

MIXED USE: A mix of uses located within a single building, such as retail on the first floor and residential or office uses on the upper floors.

MOBILE HOME: A structure constructed between January 1, 1962 and June 15, 1976, for movement on the public highways that has sleeping, cooking and plumbing facilities, that is designed, intended to be and/or being used for human occupancy by a family for residential purposes and met the construction requirements of Oregon mobile home law in effect at the time of construction.

MOBILE VENDING UNIT: A vehicle that is used in selling and dispensing goods or services to the customer. As used in this definition, a vehicle is motorized or non-motorized transportation equipment containing an axle and intended for use on public roads, including, but not limited to, a car, van, pickup, motorcycle, recreational vehicle, bus, truck, detached trailer, or a truck tractor with no more than one trailer.

MOTEL: A building or series of buildings in which lodging only is offered for compensation and which may have more than five ~~(5)~~ sleeping rooms or units for this purpose and which is distinguished from a hotel primarily by reason of providing direct independent access to and adjoining parking for each rental unit designed primarily for automobile tourists and transient persons. The term includes auto courts, tourist courts, tourist homes, and motor lodges.

MULTI-USE DEVELOPMENT: A Multi-Use Development is a development which includes a number of distinct categories of uses, one or more of which is not allowed as a primary or accessory use in the underlying zoning district. Multi-Use Developments are allowed as conditional uses subject to the procedures and standards set forth in Section 1016 of this Ordinance.

NATIVE PLANTS: Any indigenous or resident species currently or historically found in the Willamette Valley.

NATURAL AREA: An area of land or water that has substantially retained its character and functions as an important habitat for plant and animal life.

NONCONFORMING DEVELOPMENT: An element of development, such as landscaping, parking, height, signage, or setbacks that was created in conformance with development regulations which, due to a change in the zone or zoning regulations, is no longer in conformance with the current applicable regulations.

NONCONFORMING USE: A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone.

~~NONFARM USE: A dwelling, or the creation of a lot for a dwelling, not provided in conjunction with a farm use in an agricultural district.~~

NUDITY OR NUDE: Being devoid of a covering for the male or female genitalia consisting of an opaque material which does not simulate the organ covered and, in the case of a female, exposing to view one or both breasts without a covering over the nipple that is at least three ~~(3)~~ inches in diameter and does not simulate the organ covered.

NURSERY: The propagation of trees, shrubs, vines or flowering plants for transplanting, sale, or for grafting or budding; planting of seeds or cuttings; grafting and budding one variety on another; spraying and dusting of plants to control insects and diseases, and buying and selling the above plant stock at wholesale or retail. Help and seasonal labor may be employed. The term "nursery" contemplates the sale of a product of such nursery. The conduct of a nursery business presumes parking places for customers, the keeping of sales records, and quarters for these functions. However, the use does not include the business of reselling goods purchased off the premises, except plant stock, or the establishment of a roadside stand.

NURSING HOME: A nursing, convalescent, or rest home facility licensed by the State under ORS chapters 441 and 442, or an assisting living facility licensed under ORS 443, which provides, for a period exceeding ~~twenty-four (24)~~ hours, the continuous services of licensed nursing personnel to care for chronically ill or infirm patients, exclusive of those patients related to the owner or facility administrator by blood or marriage. Such nursing, convalescent, or rest home must provide nursing services to those patients who, in the judgment of a physician, registered nurse, or facility administrator, require remedial, restorative, supportive, or preventive nursing

measures.

OPEN SPACE: Land within a development which has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreational uses or for scenic purposes. Open space shall be used as such in perpetuity.

OVERBURDEN: Earth that lies above a natural deposit of a mineral.

OVERHEAD SPRINKLER IRRIGATION SYSTEMS: Systems that deliver water for irrigation from spray heads, rotors or other above-ground emitters that send water through the air.

OWNER: Person or persons holding fee title to a parcel, lot or tract of land, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed the owner.

PARCEL: A unit of land created by a partition of land. For the purposes of this Ordinance, parcel includes lot and lot of record unless otherwise specified in the context of the specific provisions.

PARKING STRUCTURE: A structure having at least two levels which is designed and used for parking vehicles, or a structure having one level of covered parking area under an open space or recreational use. A one level surface parking area, garage or carport shall not be considered a "parking structure" for purposes of this Ordinance.

PARTITION: To divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. "Partition" does not include divisions of land resulting from lien foreclosures, divisions of land resulting from foreclosure of recorded contracts for the sale of real property and divisions of land resulting from the creation of cemetery lots; and "partition" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by an applicable zoning ordinance. "Partition" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner.

PEDESTRIAN AMENITIES: Outdoor improvements directly visible and accessible to pedestrians that promote and facilitate pedestrian use, including plazas, pocket parks, courtyards, awnings or other weather protection, kiosks or gazebos, water features, drinking fountains, sculpture, outside seating areas, landscape planters, trellises, and street furniture.

PEDESTRIAN PATHWAY: A hard-surfaced or permeable hard-surfaced pedestrian facility adjacent to a public roadway where there is no curb, but is protected from vehicular traffic or set back behind a planting strip.

PEDESTRIAN-SCALE LIGHTING: Street lights designed to illuminate sidewalks to provide security for nighttime use by pedestrians. Pedestrian scale lighting includes ornamental lighting with a 14- to 25-foot mounting height and which meets the Illumination Society guidelines for Commercial Collector roadways.

PENNANT: Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended, usually in series, from a rope, wire, or string, and designed to move in the wind.

PERVIOUS: Any surface or material that allows the passage of water through the material and into the underlying soil.

PLANNING DIRECTOR: The administrative official of Clackamas County, or authorized staff member, designated to administer the responsibilities of the Planning Division.

PLAT: The final map which is a diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a partition or subdivision.

POROUS PAVEMENT: Surface to walk, drive or park on that may reduce stormwater runoff by allowing water to soak into the ground. Examples are permeable pavers, pervious concrete, porous asphalt, and gravel.

PRELIMINARY PLAN: A clearly legible and approximate drawing of the proposed layout of streets, blocks, lots and other elements of a subdivision or partition which shall help furnish a basis for the approval or disapproval of the general layout of the major partition, short subdivision, subdivision or other development. For the purposes of this Ordinance, the terms "preliminary" and "tentative" as used in Chapter 92, Oregon Revised Statutes, shall be synonymous.

PREMISES: A lot, building, or portion of a lot or building, occupied by a use with its appurtenances.

PRESERVATION, CULTURAL RESOURCES: The identification, study, protection, restoration, rehabilitation or enhancement of cultural resources.

PRIMARY BUILDING WALL: Exterior building wall which contains a public entrance to the occupant's premises and faces either a street or a parking area.

~~PRINCIPAL DWELLING, NATURAL RESOURCE: A dwelling provided in conjunction with a farm or forest use in an agricultural or forest district which is occupied by the owner or primary operator of the farm or forest use on the property.~~

PRODUCE STAND: A table, bench (or similar), cart, or structure, any of which may be covered, that is located or erected for the purpose of direct sales by growers of agricultural goods, including vegetables, fruits, flowers, bulbs, herbs, plants, honey, and similar products as determined by the Planning Director, but not including

processed foods such as jams or jellies, that are produced on the same site at which the produce stand is located.

PROFESSIONAL-TYPE SERVICES: A professional-type service shall include activities such as those offered by a physician, surgeon, dentist, lawyer, architect, engineer, accountant, artist, teacher, real estate and insurance sales.

PUBLIC OWNERSHIP: Land owned by federal, state regional or local government or governmental agency.

PUBLIC UTILITY: A utility regulated by the Public Utility Commission under ORS 757 or any other utility that provides electrical energy directly to consumers within the State of Oregon, including, but not limited to, municipalities, cooperatives and people's utility districts. When this definition differs from that in ORS 758.500, the definition in ORS 758.500 shall prevail.

PUBLIC WATER SYSTEM: A system for the provision to the public of piped water for human consumption, if such system has more than three service connections and is a facility licensed by the State of Oregon Health Division.

RAINWATER COLLECTION SYSTEM: A system of pipes, container (rain barrel, rainwater tank, pond, or rainwater reservoir), valves and associated apparatus for collecting and storing harvested rainwater runoff, typically from rooftops via rain gutters, but also from ground catchment systems.

RECORDER'S PLAT SHEET: A standard "recorder's plat sheet" shall be a good quality, white, cold-pressed, double-mounted drawing paper ~~eighteen (~~18~~)~~ inches by ~~twenty-four (~~24~~)~~ inches in size with the muslin extending three ~~(3)~~ inches at one end for binding purposes. No portion of the map or drafting shall be closer than one ~~(1)~~ inch of the edge of the board.

RECREATIONAL VEHICLE: A vehicle licensed by the Oregon State Department of Motor Vehicles, with or without motive power, which is designed, intended to be and/or used for temporary human occupancy for recreation, seasonal or emergency purposes, and has a gross floor area not exceeding 400 square feet in the set-up mode. These shall include but are not limited to park trailers, travel trailers, pickup campers, motor homes, fifth wheel trailers, camping and tent trailers.

RECYCLABLE DROP OFF SITE: A convenient location not within a public right-of-way where mobile depots or drop boxes may be sited as a recyclable material collection point for nearby residents prior to delivery to a broker or user of such materials.

RECYCLE/RECYCLING: A process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity. It shall also include the collection, transportation, or storage of products by other than the original user or consumer, giving rise to the product's being in the stream of

commerce for collection, disposal, recycling, reuse, resource recovery, or utilization.

RECYCLING CENTER: A facility that primarily purchases for recycling or reuse principal recyclable materials which have been source-separated by type, such as vegetative yard debris, paper, glass, and metal, by the person who last used the unseparated solid wastes, but not a salvage or junk yard. Principal recyclable materials are those items defined as such by the Oregon Department of Environmental Quality.

RELATIVE: A parent, child, brother, sister, grandparent or grandchild of a person or person's spouse.

RESERVE STRIP: A strip of land, usually one ~~(1)~~ foot in width, across the end of a street or alley which shall be under the ownership of the County to insure street extensions where needed.

RESIDENTIAL HOME: A dwelling operated as a single housekeeping unit for the purpose of providing food, shelter, personal services, care, and when appropriate, a planned treatment or training program of counseling, therapy, or other rehabilitative social service, for persons of similar or compatible conditions or circumstances.

RESIDENTIAL TRAILER: A structure constructed prior to January 1, 1962, for movement on the public highways that has sleeping, cooking and plumbing facilities, that is designed, intended to be and/or being used for human occupancy by a family for residential purposes and that was constructed in accordance with Federal Manufactured housing construction and safety standards and regulations in effect at the time of construction and is greater than 400 square feet and less than 700 square feet.

RESOURCE RECOVERY FACILITY: Any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse, but not a salvage or junk yard.

RIGHT-OF-WAY: A passageway conveyed for a specific purpose.

ROAD: A public or private way created to provide ingress to, or egress from, one or more lots, parcels, areas or tracts of land, or that provides for travel between places by vehicles. A private way created exclusively to provide ingress and egress to land in conjunction with a forest, farm or mining use is not a "road:". The terms "street", "access drive" and "highway" for the purposes of this Ordinance shall be synonymous with the term "road".

ROAD, COUNTY: A public way under County jurisdiction which has been accepted into the County road maintenance system by order of the Board of County Commissioners.

ROAD, PRIVATE: A private way created by deed or easement to provide vehicular ingress to, or egress from, three ~~(3)~~ or more lots or parcels.

ROAD, PUBLIC: A public way dedicated or deeded for public use but not accepted into the County road maintenance system, intended primarily for vehicular circulation and access to abutting properties.

ROADWAY: That portion of a road or alley that has been improved for vehicular traffic.

SALVAGE: Separating, collecting or retrieving reusable solid waste for resale.

SALVAGE, JUNK YARD: A location on which solid wastes are separated, collected, and/or stored pending resale.

SCHOOL, COMMERCIAL: A building where instruction is given to pupils in arts, crafts, or trades, and operated as a commercial enterprise as distinguished from schools endowed and/or supported by taxation.

SCHOOL, PRIVATE: Includes private kindergartens, nurseries, play schools, and church-related schools.

SCREENING: Sight-obscuring fence, or sight-obscuring planting.

SERVICE STATION: A commercial establishment with sales and services limited to the sale of motor fuels and supplying goods and service generally required in the operation and maintenance of automotive vehicles and fulfilling a motorist's needs. These may include sale of petroleum products; sale and servicing of tires, batteries, automotive accessories and replacement items; washing and lubricating services; the performance of minor automotive maintenance and repair, and the supplying of other incidental customer services and products. Major automotive repairs, painting and fender work are excluded. An electric vehicle charging station is not a service station.

SHARED PARKING: Parking spaces used jointly by two or more uses within the same development, or separate adjacent developments, which either have peak hours of operation that do not overlap, or typically provide services to many of the same patrons (i.e. restaurant in an office complex or hotel providing lodging for convention participants within the same development), provided satisfactory legal evidence is presented in the form of deeds, leases, or contracts securing full access to such parking spaces for all parties jointly using them.

SIDEWALK: A concrete pedestrian facility adjacent to a curb along a public road or setback from the curb behind a planting strip.

SIGHT-OBSCURING FENCE: Any fence or wall which conceals or makes indistinct any object viewed through such fence or wall.

SIGHT-OBSCURING PLANTING: A dense perennial evergreen planting with sufficient foliage to obscure vision and which will reach a height of at least six ~~(6)~~ feet within ~~thirty (30)~~ months after planting.

SIGN: A presentation or representation, other than a house number, by words, letters, figures, designs, pictures or colors displayed out of doors in view of the general public so as to give notice relative to a person, a business, an article of merchandise, a service, an assemblage, a solicitation, or a request for aid or other type of identification. This definition specifically includes billboards, ground signs, freestanding signs, wall signs, roof signs, logo signs, and signs on the following: marquees, awnings, canopies, street clocks and furniture and includes the surface upon which the presentation or representation is displayed.

SIGN, ANIMATED: Any sign that uses movement or change of lighting to depict action or create a special effect or scene.

SIGN AREA, OR SURFACE AREA: The area, on the largest single face of a sign, within a perimeter which forms the outside shape of a sign. If the sign consists of more than one module, the total area of all modules will constitute the sign area. The area of a sign having no such perimeter or boarder shall be computed by enclosing the entire copy area within the outline of either a parallelogram, triangle, circle or any other easily recognized geometric shape and then computing the area. Where a sign is of a three-dimensional, round or irregular shape, the largest cross section shall be used in flat projection for the purpose of computing sign area.

SIGN, BUILDING: Any sign attached to any part of a building, as contrasted to a freestanding sign.

SIGN, CHANGEABLE COPY: A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight times per day shall be considered an animated sign and not a changeable copy sign for purposes of this ordinance.

SIGN, COMMERCIAL: Any sign associated with a commercial activity.

SIGN, ELECTRONIC MESSAGE CENTER: A sign, display or device, or portion thereof, whose message may be changed by electronic process or remote control, and includes electronic time and temperature displays and the device known in the advertising industry as a commercial electronic variable message sign.

SIGN, FREESTANDING: A sign not attached to a building.

SIGN, INCIDENTAL: A sign, generally informational, that has a purpose secondary to the use of the site on which it is located, such as "no parking," entrance," "loading only," "telephone," and other similar directives.

SIGN, INTEGRAL ROOF: Any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six inches.

SIGN, LOGO: A sign consisting of a trademark or symbol.

SIGN, MESSAGE: Anything displayed on an electronic message center sign, including copy and graphics.

SIGN, MONUMENT: A sign which extends from the ground or which has a support which places the bottom thereof less than two ~~(2)~~ feet from the ground.

SIGN, OFF-PREMISES: A sign which advertises goods, products or services which are not sold, manufactured, or distributed on or from the premises or facilities on which the sign is located.

SIGN, POLE: A sign erected and maintained on a freestanding frame, mast or pole and not attached to any building but does not include ground-mounted signs.

SIGN, PORTABLE: Any sign not permanently attached to the ground or other permanent structure, and/or designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used as other than a sign in the normal day-to-day operations of the business for transportation of goods and/or personnel.

SIGN, PROJECTING: Any sign affixed to a building or wall in such a manner that its leading edge extends more than six inches beyond the surface of such building or wall.

SIGN, PUBLIC SERVICE INFORMATION: Any sign, or message on an electronic message center sign, which provides the time, date, temperature, weather, or information concerning civic, charitable or other noncommercial activities.

SIGN, RESIDENTIAL: Any sign associated with a dwelling.

SIGN, ROOF: Any sign erected and constructed wholly on and on top of the roof of a building, supported by the roof structure.

SIGN, SEGMENTED MESSAGE: Any message or distinct subunit of a message presented by means of at least one display change on an electronic message center sign.

SIGN, TEMPORARY: Any sign that is normally considered to be of temporary duration and is not permanently mounted. Examples include, but are not limited to: commercial signs for limited term events, election signs, real estate signs, etc.

SIGN, TRAVELING MESSAGE: A message which appears to move across an electronic message center sign.

SIGN, WALL: Any sign parallel to, and attached within six inches of a wall, painted

on the wall surface, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

SIGN, WINDOW: Any sign, pictures, symbol, or combination thereof, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

SIGNIFICANT NATURAL AREAS: Natural areas as defined in "Oregon National Areas - Clackamas County Data Summary" published by The Nature Conservancy. This list of natural areas may be amended by the County as additional areas are identified.

SMALL POWER PRODUCTION FACILITY: A facility that produces energy primarily by use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof, having a power production capacity that, together with any other facilities located at the same site, is not greater than 80 megawatts; and such facility is more than 50 percent owned by a person who is not a public utility, an electric utility holding company or an affiliated interest. When this definition differs from that in ORS 758.500, the definition in ORS 758.500 shall prevail.

SOIL MOISTURE SENSING DEVICE OR SOIL MOISTURE SENSOR: A device that measures the amount of water in the soil. The device may also suspend or initiate an irrigation event.

SOLAR ENERGY SYSTEM: Any solar collector, or other solar energy device, the primary purpose of which is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, water heating, or electricity. The power generating capacity of a "solar energy system" is limited to power consumed by the development to which the system is accessory, or—if the system feeds power into the grid of a public utility company—to an amount equivalent to no more than the annual usage of the development to which the system is accessory.

SOLID WASTE: Solid waste shall include all putrescible and non-putrescible waste, including, but not limited to: garbage; compost; organic waste; yard debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or construction waste; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; special vehicles and equipment that are immobile and/or inoperable; manufactured dwellings or residential trailers which are dilapidated, partially dismantled or fire damaged; manure; feces; vegetable or animal solid and semi-solid waste and dead animals; and infectious waste. Waste shall mean useless, unwanted or discarded materials. The fact that materials which would otherwise come within the definition of Solid Waste may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms "solid waste" or "waste" do not include:

A. Environmentally hazardous wastes as defined in ORS 466.055;

B. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential non-agricultural purposes;

C. Septic tank and cesspool pumping or chemical toilet waste;

D. For purposes of Article V of this Ordinance, reusable beverage containers as defined in ORS 459A;

E. Source separated, principal recyclable materials as defined in ORS 459A and the Rules promulgated thereunder and under this Ordinance, which have been purchased or exchanged for fair market value, unless said principal recyclable materials create a public nuisance pursuant to Article II of this Ordinance;

F. Applications of industrial sludges or industrial waste by-products authorized through a Land Use Compatibility Statement of Management Plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the Land Use Compatibility Statement or Management Plan, but not to exceed 100 dry tons per acre annually;

G. Stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, non-agricultural, or silvicultural operations;

H. Sludge derived products applied for beneficial uses on land in landscaping projects.

SPECIFIED SEXUAL ACTIVITIES: Real or simulated acts of human sexual intercourse, human/animal sexual intercourse, masturbation, sadomasochism abuse (as defined on ORS 167.060), sodomy, or the exhibition of human sexual organs in a stimulated state, or the characterization thereof in printed form. This definition shall not be construed to allow uses or activities which are unlawful under State criminal laws.

STABLE, BOARDING OR RIDING: Premises that are used by the public for the training, riding, boarding, public exhibition or display of livestock for commercial or noncommercial purposes. An agricultural building, as defined in Chapter 4 of the Uniform Building Code, or premises used for the boarding, training or riding of three ~~(3)~~ or less livestock other than those of the operator of the premises shall not be a "stable" for the purposes of this Ordinance.

STATIONARY WINDOWS: A window that cannot be opened and is used for light only.

STORY: A portion of a building included between a floor and the ceiling next above

it, exclusive of a basement.

STREAM: A body of perennial running water, together with the channel occupied by such running water.

STREAM CORRIDOR AREA: An area including the streambed and a required strip or buffer of land on each side of the streambed necessary to maintain streamside amenities and existing water quality. The width of the stream corridor area varies with the site conditions and shall be determined by on-the-ground investigation, as provided under Subsection 1002.05B. The intent of the stream corridor area shall be to preserve natural environmental qualities and the function of land to purify water before it reaches the stream but not to prohibit timber management activities pursuant to the State Forest Practices Act.

STREET FRONTAGE: The entire linear distance of a lot abutting a street. Toe strips or flair strips shall not be used to satisfy the minimum street frontage requirements of the Ordinance.

STREET: See "ROAD".

STREET FURNITURE: Any structural element other than residential, industrial or commercial buildings, streets, sidewalks and curbs shall be considered street furniture including, but not limited to, benches, bus shelters, newsstands, bulletin boards, kiosks, drinking fountains, bicycle stalls, etc.

STRUCTURE: Anything constructed or erected, which requires location on the ground or attached to something having a location on the ground.

SUBDIVIDE: To divide an area or tract of land into four ~~(4)~~ or more lots within a calendar year when such area or tract exists as a unit or contiguous units, under a single ownership at the beginning of such year, whether or not that area or tract of land is divided by a water course or a road right-of-way.

SUBDIVISION: A division of property creating four or more lots in the same calendar year.

SURFACE MINING: Includes the mining of minerals by removing overburden and extracting a natural mineral deposit thereby exposed, or simply such extraction. Surface mining includes open-pit mining, auger mining, production of surface mining waste, prospecting and exploring that extracts minerals or affects land, processing to include rock crushing and batch plant operations, and excavation of adjacent offsite borrow pits other than those excavated for building access roads.

SURFACE MINING, MINERALS: Includes soil, clay, stone, sand, gravel, and any other inorganic solid excavated from a natural deposit in the earth for commercial, industrial, or construction use.

SURFACE MINING, NONAGGREGATE MINERALS: Coal and metal-bearing ores, including but not limited to ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome, copper or mercury.

SURFACE MINING, OPERATOR: A legal entity engaged in surface mining or in an activity at a surface mining site preliminary to surface mining.

SURFACE MINING, RECLAMATION: Procedures designed to minimize the disturbance from surface mining and to provide for the rehabilitation of surface resources through the use of plant cover, soil stabilization, and other procedures to protect the surface and subsurface water resources, and other measures appropriate to the subsequent beneficial use of mined lands.

SUSTAINABILITY: Using, developing, and protecting resources in a manner that enables people to meet their current needs and also provides that future generations can meet their own needs. Sustainability requires simultaneously meeting environmental, economic, and community needs.

TRACT: One or more contiguous lots or parcels under the same ownership.

TRAIL: A hard- or soft-surfaced facility for pedestrians, bicyclists, or equestrians that is separate from vehicular traffic. Trails often go through natural areas and are designed to have a minimal impact on the natural environment.

TRANSFER STATION: A fixed or mobile facility used as part of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site, including but not limited to drop boxes made available for general public use. This definition does not include solid waste collection vehicles.

TRANSIT STOP: Any posted bus or light rail stop.

TRANSITIONAL AREA: The lot or lots within any residential district, having a lot line abutting and impacted by a boundary of a commercial or industrial district and extending into the residential district where such use will not adversely impact existing residential uses.

TURF LAWN: A ground-cover surface made up of thick, closely mowed, cultivated grass.

UNDERGROUND STRUCTURE: A structure in which more than 50 percent of the cubic footage of the enclosed, covered space is (1) constructed below the highest elevation of the ground adjoining the structure site prior to excavation; and (2) covered over by ground materials, such as soil, sod, sand or exterior paving, which are continuous on at least one side of the structure with contiguous surface ground materials. Conventional roofing materials may be used to cover any portion of the structure which extends above ground elevation. For an underground structure to be a "dwelling unit" access must be provided to outdoor space at floor level (within two

feet of elevation) equal to at least 20 percent of the square footage of the enclosed, covered area of the structure.

Underground structures must meet all appropriate Uniform Building Code regulations and the requirements of the subject zoning district, except as provided in Section 904 of this Ordinance.

UNINCORPORATED COMMUNITY: A settlement that conforms to the definition set forth in Chapter 660, Division 22 of the Oregon Administrative Rules. The County's unincorporated communities are identified in Chapter 4 of the Comprehensive Plan and shown on Map IV-7 of the Comprehensive Plan.

USE: The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied.

UTILITY CARRIER CABINETS: A small enclosure used to house utility equipment intended for offsite service, such as electrical transformer boxes, telephone cable boxes, cable TV boxes, fire alarm boxes, police call boxes, traffic signal control boxes, and other similar apparatus.

VEHICLE, COMMERCIAL: A commercially licensed and operated vehicle exceeding the capacity of one ton.

VISUALLY SENSITIVE AREAS: Prominent natural landscape features such as hillsides, forests, and waterways; historic district; visual corridors along major highways and rivers. Natural landscapes that occur within the urban area and along traffic corridors are of higher visual significance.

WALKWAY: A hard-surfaced facility for pedestrians, within a development or between developments, distinct from surfaces used by motor vehicles. A walkway is distinguished from a sidewalk by its location on private property.

WASTE-RELATED USES: Waste-related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site for transfer to another location, uses which collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material. Waste-related uses also includes uses which receive hazardous wastes from others and which are subject to the regulations of OAR 340.100-110, Hazardous Waste Management.

WETLANDS: Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

YARD: The open space, on a lot, between a structure or structures and any lot line. The minimum horizontal distance between any point on a lot line and the nearest part of any structure or building is the yard depth.

YARD, FRONT: Any yard abutting a state highway, County road, public road, private road, or access drive, except as modified by Subsections 903.01 and 903.07 or this Ordinance.

YARD, REAR: Any yard abutting a rear lot line.

YARD, SIDE: Any yard abutting a side lot line.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-231, 1/31/12; Amended by Ord. ZDO-232, 3/12/12]

SECTION 400

NATURAL RESOURCE DISTRICTS

401 EXCLUSIVE FARM USE DISTRICT (EFU)

401.01 PURPOSE

Section 401 is adopted to implement the goals and policies of the Comprehensive Plan for Agriculture areas.~~:~~

~~A. Preserve agricultural use of agricultural land;~~

~~B. Protect agricultural lands from conflicting uses, high taxation, and the cost of public facilities unnecessary for agriculture;~~

~~C. Maintain and increase the agricultural economic base of the County;~~

~~D. Increase agricultural income and employment by creating conditions which further the growth and expansion of agriculture and which attract related industries;~~

~~E. Maintain and improve the quality of air, water, and land resources;~~

~~F. Conserve scenic and open space; and~~

~~G. Protect wildlife habitats.~~

[Amended by Ord. ZDO-230, 9/26/11]

401.02 AREA OF APPLICATION

Property may be zoned Exclusive Farm Use District when the site has a Comprehensive Plan designation of Agriculture and the criteria in Section 1202 are satisfied.

~~A. The Exclusive Farm Use District shall be applied to those areas which are generally suitable for small and large scale agricultural uses. Criteria to be considered are:~~

~~1. Lands suitable for or characterized by small or large scale agricultural uses, such as the raising of poultry, fur bearing animals, and livestock and the growing of berries, nursery stock, vegetables, grains and field crops.~~

~~2. Lands classified by the U.S. Natural Resources Conservation Service as predominantly Class I-IV soils or identified as agricultural soil by more detailed data.~~

~~3. Land in other soil classes that is suitable for farm use as defined in Oregon Revised Statues 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices.~~

~~4. Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.~~

~~5. Lands designated and acknowledged as Agriculture on Comprehensive Plan Map IV-7, *Non-Urban Area Land Use Plan, and Mt. Hood Corridor Land Use Plan.*~~

[Amended by Ord. ZDO-224, 5/31/11]

401.03 DEFINITIONS

Unless specifically defined in Subsection 401.03~~below~~ or in Section 202, words or phrases used in ~~this~~ Ssection 401 shall be interpreted to give them the same meaning as they have in common usage and to give ~~this~~ Ssection 401 its most reasonable application.

A. Accessory Farm Dwelling: Includes all types of residential dwellings allowed by the applicable state building code and the number of dwelling units is determined by a land use decision.

~~A~~B. Agricultural Land: As defined in Oregon Administrative Rules (OAR) 660-33-0020.

C. Commercial Farm: A farm unit with all of the following characteristics:

1. The land is used for the primary purpose of obtaining a profit in money from farm use;

2. The net income derived from farm products is significant; and

3. Products from the farm unit contribute substantially to the agricultural economy, to agricultural processors, and to farm markets.

D. Date of Creation and Existence: When a lot of record or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot of record 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 of record or tract.

E. Farm Operator: A person who resides on and actively manages a "farm unit".

F. Farm Stand: A structure located on a part of the farm operation owned by the farm operator that is designed and used for the 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 sale of the incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and 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.

G. Farm Unit: The contiguous and noncontiguous tracts within the County or a contiguous county held in common ownership and used by the farm operator for farm use.

H~~B~~. Farm Use: **As defined in Oregon Revised Statutes (ORS) 215.203.**

I. Fee-based Activity to Promote the Sale of Farm Crops or Livestock: A common farm-dependent accessory activity directly related to the sale of farm crops or livestock sold at the farm stand, such as, but not limited to, hay rides, corn mazes, and educational how-to-farm workshops, but not including activities with no direct relationship to the farm crops or livestock sold at the farm stand, such as, but not limited to, quilting classes, dance lessons, jewelry making, or crafts that are only intended to bring customers to the farm stand.

J. Golf Course: As defined in OAR 660-033-0130(20).

K~~C~~. High Value Farmland: **As defined in ORS 215.710 and OAR 660-033-0020(8).**

L. Immediate Family: A spouse, children, adopted children, stepchildren, to include the long term care of grandchildren and step-grandchildren, but not to include other extended family members.

M. Irrigated: Agricultural land watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. An area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.

N~~D~~. Low Value Farmland: **All land not defined as High Value Farmland in ORS 215.710 and OAR 660-033-0020(8).**

~~E. 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.~~

~~F. Tract: One or more contiguous lots or parcels under the same ownership, including lots or parcels divided by a county or public road, or contiguous at a common point. Lots or parcels divided by a State Highway are not considered contiguous.~~

~~G. Golf Course: As defined in Subsection 407.06(B)(31).~~

~~H. Irrigated: Agricultural Land watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For the purposes of this section, an area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.~~

~~I. Farm Stand: A structure designed and used for the 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 sale of the incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and 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.~~

O. Noncommercial Farm: A parcel where all or part of the land is used for production of farm products for use or consumption by the owners or residents of the property, or which provides insignificant income.

P~~J~~. Owner: For purposes of a Lot of Record Dwelling, "o~~O~~wner" 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, nephew, niece, stepparent, stepchild, grandparent, or grandchild of the owner, or a business entity owned by any one or a combination of these family members.

~~K. Historic Property: As defined in ORS 358.480.~~

~~L. Accessory Farm Dwelling: Includes all types of residential structures allowed by the applicable state building code.~~

Q. Ownership: -Holding fee title to a lot of record, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed to

have ownership. Ownership shall include all contiguous lots of record meeting this definition.

R. Private Park: Land that is used for low impact casual recreational uses such as picnicking, boating, fishing, swimming, camping, and hiking or nature oriented recreational uses such as viewing and studying nature and wildlife habitat and may include play areas and accessory facilities that support the activities listed above but does not include tracks for motorized vehicles or areas for target practice or the discharge of firearms.

S. Relative: For purposes of a Temporary Dwelling for Care, relative means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin.

T. Tract: One or more contiguous lots of record under the same ownership, including lots of record divided by a county or public road, or contiguous at a common point. Lots of record divided by a state highway are not considered contiguous.

[Amended by Ord. ZDO-224, 5/31/11]

401.04 USES AUTHORIZED

Table 401-1 identifies the uses authorized in the Exclusive Farm Use District. As used in Table 401-1:

A. "A" means the use is allowed.

B. "PDR" means the use is subject to Planning Director Review pursuant to Subsection 1305.02.

C. "C" means the use is a Conditional Use, subject to Sections 1203 and 1300.

D. The "Subject To" column identifies any specific provisions of Subsection 401.05 to which the use is subject.

E. "N" means not applicable.

F. "*NA1" means the use is not allowed except as set forth in Subsection 401.05(K)(1).

G. "*NA2" means the use is not allowed except as set forth in Subsection 401.05(K)(1) or 401.05(K)(2) and (3).

H. "HO" means the use must be reviewed by the Hearings Officer pursuant to Section 1300 for compliance with standards as outlined within this Ordinance or by state law.

I. "HV" is referencing High Value Farmland as provided for in ORS 215.710 and OAR 660-033-0020(8).

J. "LV" is referencing Low Value Farmland, lands not described in ORS 215.710 and OAR 660-033-0020(8).

Table 401-1: Uses Authorized in the Exclusive Farm Use District

	HV	LV	Use	Subject To
FARM AND FOREST USES	A	A	Propagation or harvesting of a forest product.	
	A	A	Farm use as defined in ORS 215.203	
	A	A	Other buildings customarily provided in conjunction with farm use.	
	PDR	PDR	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.	401.05(A)(1) & (B)(1)
	CU	CU	A facility for the primary processing of forest products.	401.05(A)(1) & (B)(2)
	HV	**LV**	**Use**	**Subject To**
NATURAL RESOURCE USES	A	A	Creation of, restoration of, or enhancement of wetlands.	
	PDR	PDR	The propagation, cultivation, maintenance, and harvesting of aquatic species that are not under the jurisdiction of the Oregon Fish and Wildlife Commission.	401.05(A)(1) & (C)(1)
RESIDENTIAL USES	**HV**	**LV**	**Use**	**Subject To**
	A	A	Uses and structures customarily accessory and incidental to a dwelling, only if a lawfully established dwelling exists.	
	A	A	Alteration, restoration, or replacement of a lawfully established dwelling.	401.05(A)(3) & (D)(1)
	PDR	PDR	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a County inventory as historic property and listed on the National Register of Historic Places.	401.05(A)(3)
	N	PDR	Lot of Record Dwelling on Low Value Farmland.	401.05(A)(2), (3), (4) & (D)(2)
	PDR	N	Lot of Record Dwelling on Class III or IV High Value Farmland.	401.05(A)(2), (3), (4) & (D)(3)
	HO	N	Lot of Record Dwelling on Class I or II High Value Farmland.	401.05(A)(1), (2), (3), (4) & (D)(4)
	PDR	N	Dwelling customarily provided in conjunction with a farm use on High Value Farmland.	401.05(A)(3) & (D)(5)
	N	PDR	Dwelling customarily provided in conjunction with a farm use on Low Value Farmland.	401.05(A)(3) & (D)(6)
	PDR	PDR	Dwelling customarily provided in conjunction with a commercial dairy farm.	401.05(A)(3) & (D)(7)
	PDR	PDR	160 acre test for a dwelling.	401.05(A)(3), (4) & (D)(8)
	PDR	PDR	Capability test for a dwelling.	401.05(A)(3), (4) & (D)(9)
	PDR	PDR	A single-family dwelling not provided in conjunction with farm use; a nonfarm dwelling.	401.05(A)(3), (4) & (D)(10)

	PDR	PDR	Accessory farm dwelling for a relative.	401.05(A)(3) & (D)(11)
	PDR	PDR	Accessory farm dwelling for year-round and seasonal farm workers.	401.05(A)(3) & (D)(12)
	PDR	PDR	Temporary dwelling for care, subject to Subsection 1204.03.	401.05(A)(1), (3) & (D)(13)
	PDR	PDR	Room and board arrangements for a maximum of five unrelated persons in existing dwellings.	401.05(A)(1) & (3)
	PDR	PDR	Residential home or facility as defined in ORS 197.660, in existing dwellings.	401.05(A)(1) & (3)
COMMERCIAL USES	**HV**	**LV**	**Use**	**Subject To**
	A	A	Family daycare provider.	
	PDR	PDR	Farm stands, subject to OAR 660-033-0130(23) and ORS 215.283(1)(o).	
	PDR	PDR	Home occupations, subject to Section 822.	401.05(A)(1) & (E)(1)
	PDR	PDR	A landscape contracting business.	401.05(A)(1) & (E)(2)
	PDR	PDR	Agri-tourism single event.	401.05(A)(1) & (E)(3)
	PDR	PDR	Agri-tourism for up to 6 events or activities.	401.05(A)(1) & (E)(4)
	PDR	PDR	A winery as described in ORS 215.452 or 215.453 but not a restaurant open more than 25 days per calendar year, subject to ORS 215.452 or 215.453, whichever is applicable.	
	CU	CU	A large winery with a restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.	401.05(A)(1), (E)(5) & (6)
	CU	CU	Home occupation to host events, subject to Section 806.	401.05(A)(1) & (E)(1)
	CU	CU	Home occupation for canine skills training, subject to Section 836.	401.05(A)(1) & (E)(1)
	CU	CU	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel that exceeds the standards of ORS 215.203(2)(b)(L) or Subsection 401.05(B)(1).	401.05(A)(1) & (E)(6)
	CU	CU	Agri-tourism additional events not to exceed 18 events on a minimum of 80 acres.	401.05(A)(1) & (E)(7)
	CU	CU	An aerial fireworks display business.	401.05(A)(1) & (E)(8)
	*NA1	CU	Dog kennels.	401.05(A)(1)
MINERAL, AGGREGATE, OIL, AND GAS USES	**HV**	**LV**	**Use**	**Subject To**
	A	A	Operations for the exploration for, and production of, geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators, and other customary production equipment for an individual well adjacent to a wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	A	A	Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not	

			be a basis for an exception under ORS 197.732(1)(a) or (b).	
	CU	CU	Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.	401.05(A)(1), (F)(1) & (F)(1)(a)
	CU	CU	Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement.	401.05(A)(1), (F)(1) & (F)(1)(b)
	CU	CU	Processing of other mineral resources and other subsurface resources.	401.05(A)(1), (F)(1) & (F)(1)(c)
	CU	CU	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 under Section 401.	401.05(A)(1), (F)(1) & (F)(1)(d)
	HV	**LV**	**Use**	**Subject To**
	A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.	
	A	A	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.	
	A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.	
TRANSPORTATION USES	A	A	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 public-owned property utilized to support the operation and maintenance of public roads and highways.	
	PDR	PDR	Parking of no more than seven log trucks, subject to ORS 215.311	401.05(A)(1)
	PDR	PDR	Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.	401.05(A)(1)
	PDR	PDR	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.	401.05(A)(1)
	PDR	PDR	Improvement 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.	401.05(A)(1)
	CU	CU	Roads, highways and other transportation facilities, and improvements not otherwise allowed under Section 401.	401.05(G)(1)

	CU	CU	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance, and service facilities.	401.05(A)(1) &(G)(2)
	CU	CU	Transportation improvements on rural lands, subject to OAR 660-012-0065.	401.05(A)(1)
	HV	**LV**	**Use**	**Subject To**
UTILITY AND SOLID WASTE DISPOSAL FACILITY USES	A	A	Irrigation reservoirs, canals, delivery lines, and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.	
	A	A	Solar energy system.	
	A	A	Rainwater collection systems as an accessory use.	
	A	A	Electric vehicle charging stations for residents and their non-paying guests.	
	A	A	Meteorological towers.	
	A	A	Wind energy power production systems as an accessory use.	401.05(H)(1)
	A	A	Collocation of antennas on a previously approved wireless telecommunication facility, subject to Subsection 835.04(A).	
	A	A	Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and are located on one or more of the following: a public right-of-way; land immediately adjacent to a public right-of-way provided the written consent of all adjacent property owners has been obtained; and/or the property to be served by the utility.	
	PDR	PDR	Essential public communication services, as defined in Subsection 835.03(D). The use is subject to ORS 215.275, if it includes a transmission tower less than or equal to 200 feet in height.	401.05(A)(1)
	PDR	PDR	Collocation of wireless telecommunication facilities as identified in Subsection 835.05(A)(2), subject to Section 835, provided such facilities include a transmission tower that is over 200 feet in height.	401.05(A)(1)
	PDR	PDR	Utility facilities necessary for public service, including wireless telecommunication facilities not otherwise provided for in Section 401 and wetland waste water treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.	401.05(A)(1) & (H)(2)
	PDR	N	Composting operations and facilities on high value farmland.	401.05(A)(1) & (H)(3)
	N	PDR	Composting operations and facilities on low value farmland.	401.05(A)(1) & (H)(4)
	*NA1	CU	Composting operations and facilities, subject to	401.05(A)(1) & (H)(5)

			Section 834.	
	CU	CU	Transmission towers over 200 feet in height, except as otherwise provided in Section 401 for essential public communication services. Towers supporting wireless telecommunication facilities are subject to Section 835.	401.05(A)(1)
	CU	CU	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind or photovoltaic solar power generation facilities.	401.05(A)(1) & (H)(6)
	CU	CU	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(37).	401.05(A)(1)
	CU	CU	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(38).	401.05(A)(1)
	*NA1	CU	A site for the disposal of solid waste approved by the governing body of a city or county or both 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.	401.05(A)(1)
PARKS, PUBLIC, AND QUASI-PUBLIC USES	**HV**	**LV**	**Use**	**Subject To**
	A	A	Land application of reclaimed water, agricultural process or industrial process water, or biosolids for agricultural, horticultural, or forest production, or for irrigation in connection with a use allowed in the EFU zoning district, subject to the issuance of a license, permit, or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053, or 468B.055, or in compliance with rules adopted under ORS 468(B).095.	
	A	A	Onsite filming and activities accessory to onsite filming for 45 days or less.	
	PDR	PDR	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.	401.05(A)(1) & (I)(1)
	PDR	PDR	Public parks and playgrounds.	401.05(A)(1), (5) & (I)(2)
	PDR	PDR	Fire service facilities providing rural fire protection services.	401.05(A)(1)
	PDR	PDR	Community centers.	401.05(A)(1), (5) & (I)(3)
	PDR	PDR	Living history museum.	401.05(A)(1), (5) & (I)(4)
	PDR	PDR	Firearms training facility as provided in ORS 197.770.	401.05(A)(5) & (I)(5)
	PDR	PDR	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.	401.05(A)(1)
	PDR	PDR	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to	401.05(A)(1)

			provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.	
	*NA1	PDR	Churches and cemeteries in conjunction with churches, consistent with ORS 215.441, which does not include private or parochial school education for prekindergarten through grade 12 or higher education.	401.05(A)(5)
	CU	CU	Operations for the extraction and bottling of water.	401.05(A)(1)
	CU	CU	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.	401.05(A)(1)
	*NA2	CU	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.	401.05(A)(1) & (5)
	*NA1	CU	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.	401.05(A)(1), (5) & (I)(6)
	*NA1	CU	Golf courses.	401.05(A)(1), (5) & (I)(7)
OUTDOOR GATHERINGS	**HV**	**LV**	**Use**	**Subject To**
	A	A	An outdoor mass gathering or other gathering described in ORS 197.015(10)(d).	401.05(J)(1)
	CU	CU	Any outdoor gathering subject to review of the Planning Commission under ORS 433.763.	401.05(A)(1) & (J)(2)

~~401.04 PRIMARY USES ALLOWED ON LOW AND HIGH VALUE FARMLAND~~

~~A. Farm uses as defined in Oregon Revised Statutes (ORS) 215.203.~~

~~B. Nonresidential buildings customarily provided in conjunction with farm uses.~~

~~C. Accessory buildings customarily incidental to an existing dwelling.~~

~~D. Propagation and harvesting of a forest product. Inside the Portland Metropolitan Urban Growth Boundary, refer to Subsection 1002.04 regarding a development restriction that may apply if excessive tree removal occurs.~~

~~E. Creation, restoration, or enhancement of wetlands.~~

~~F. Alteration, restoration, or replacement of a lawfully established dwelling.~~

~~1. A lawfully established dwelling is a single family dwelling which has:~~

~~a. Intact exterior walls and roof structure;~~

~~b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;~~

~~c. Interior wiring for interior lights; and~~

~~d. A heating system.~~

~~2. The dwelling to be replaced shall be removed, demolished, or if not a manufactured dwelling, converted to an allowable use within 90 days of the occupancy of the new dwelling. Manufactured dwellings and residential trailers to be replaced must be removed from the property within 30 days of the occupancy of the new dwelling.~~

~~3. If the dwelling to be replaced is located on a portion of the lot not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records to the County Clerk an irrevocable deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. Any release shall be signed by the County and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling.~~

~~G. A winery as described in ORS 215.452.~~

~~H. Farm stands.~~

~~I. Operations for the exploration for, and production of, geothermal resources as defined by ORS 522.05 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to a wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).~~

~~J. Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).~~

~~K. Climbing and passing lanes within a public right-of-way existing as of July 1, 1987.~~

~~L. 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.~~

~~M. Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.~~

~~N. Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right-of-ways existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.~~

~~O. Reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under ORS Chapter 215.~~

~~P. Collocation of wireless telecommunication facilities listed in Subsection 835.04(A), subject to Section 835, provided such facilities include an existing tower that is over 200 feet in height.~~

~~Q. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in the section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.~~

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

401.05 APPROVAL CRITERIA FOR SPECIFIC USES

The following criteria apply to some of the uses listed in Table 401-1. The applicability of a specific criterion to a listed use is established by Table 401-1.

A. General Criteria

1. Uses may be approved only where such uses:

   a. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

   b. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

2. The Natural Resources Conservation Service (NRCS) Internet Soils Survey for Clackamas County shall be used to determine the soil

classification and soil rating for a specific lot of record, except for purposes of approving a Lot of Record Dwelling application, the applicant may submit a report from a professional soils classifier whose credentials are acceptable to the Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and submits a statement from the Oregon Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report and finds the analysis in the report to be soundly and scientifically based.

3. The landowner for the dwelling shall sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

4. An approval to construct a dwelling may be transferred to any other person after the effective date of the land use decision.

5. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

   a. Any enclosed structures or group of enclosed structures described in Subsection 401.05(A)(5) within a tract must be separated by at least one-half mile. For purposes of Subsection 401.05(A)(5), "tract" means a tract as defined by Subsection 401.03(T) that was in existence as of June 17, 2010.

   b. Existing facilities wholly within a farm use zone may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of Subsection 401.05(A)(5).

B. Farm and Forest Uses

1. A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141 shall be located on a farm that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage, or other farm use or devote more than 10,000 square feet to the

processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. Any division of a lot of record that separates a processing facility from the farm operation on which it is located is prohibited.

2. A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in Subsection 401.05(B)(2), means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in Subsection 401.05(B)(2) means timber grown upon a tract where the primary processing facility is located.

C. Natural Resource Uses

1. The County shall provide notice of all applications for the propagation, cultivation, maintenance, and harvesting of aquatic species that are not under the jurisdiction of the Oregon Fish and Wildlife Commission to the Oregon Department of Agriculture. Notice shall be provided in accordance with Section 1302 but shall be mailed at least 20 calendar days prior to the issuance of the Planning Director's decision.

D. Residential Uses

1. Alteration, restoration, or replacement of a lawfully established dwelling.

a. A lawfully established dwelling is a single-family dwelling which has:

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.

b. In the case of replacement, the dwelling to be replaced shall be:

i. Removed, demolished, or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the

same lot of record. A dwelling established under Subsection 401.05(D)(1) shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot of record not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the County a deed restriction prohibiting the siting of a dwelling on that portion of the lot of record. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the County. The release shall be signed by the County or its designee and state that the provisions of Subsection 401.05(D)(1)(b) regarding replacement dwellings have changed to allow the siting of another dwelling. The Planning Director shall maintain a record of the lots of record that do not qualify for the siting of a new dwelling under the provisions of Subsection 401.05(D)(1)(b), including a copy of the deed restrictions and release statements filed under Subsection 401.05(D)(1)(b); and

ii. For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes, and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

2. Lot of Record Dwelling when determined to be located on Low Value Farmland, subject to the following criteria:

a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.

b. The lot of record has been under the continuous ownership of the present owner who either,

i. Acquired the lot of record prior to January 1, 1985, or

ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.

c. The tract on which the dwelling will be sited does not include a dwelling;

d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.

e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.

f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership shall remain in common ownership as long as the dwelling remains as approved.

g. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. The Oregon Department of Fish and Wildlife (ODFW) suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.

3. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Class III and IV Soil, subject to the following criteria:

a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.

b. The lot of record has been under the continuous ownership of the present owner who either,

i. Acquired the lot of record prior to January 1, 1985, or

ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.

c. The tract on which the dwelling will be sited does not include a dwelling.

d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.

e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.

f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership land shall remain in common ownership as long as the dwelling remains as approved.

g. The tract is no more than 21 acres.

h. The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or, the tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary.

i. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or the impacts can be adequately mitigated so as not to interfere. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of impact mitigation measures, winter range is seriously considered impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.

4. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Prime, Unique, Class I or II Soils if a Hearings Officer review pursuant to Subsection 1300 finds the following:

a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.

b. The lot of record has been under the continuous ownership of the present owner who either,

i. Acquired the lot of record prior to January 1, 1985, or

ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.

c. The tract on which the dwelling will be sited does not include a dwelling;

d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.

e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.

f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership land shall remain in common ownership as long as the dwelling remains as approved.

g. The lot of record cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. Extraordinary circumstances include very steep slopes, deep ravines, rivers, streams, roads, railroads or utility lines or other similar natural or physical barriers that by themselves or in combination, separate the subject property from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

h. The dwelling will not materially alter the stability of the overall land use pattern in the area.

i. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. (Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet).

5. Dwelling in conjunction with a farm use on High Value Farm Land: A primary farm dwelling for the farm operator may be allowed subject to the following criteria:

   a. The subject tract is currently employed in farm use on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years;

   b. Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.

   c. The lot of record on which the dwelling will be sited was lawfully created;

   d. Except as permitted in Subsection 401.05(D)(12), there is no other dwelling on the subject tract;

   e. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;

   f. In determining the gross income requirement, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract.

   g. Only gross income from land owned, not leased or rented, shall be counted.

   h. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used again to qualify any other parcel for a primary farm dwelling.

   i. Only a lot of record zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.

6. Dwelling in conjunction with a farm use on Low Value Farmland: A primary farm dwelling for the farm operator may be allowed on low value farmland subject to the following criteria:

a. The subject tract is currently employed in farm use on which the farm operator earned at least $32,500 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years;

b. Lots or record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.

c. Except as permitted in Subsection 401.05(D)(12), there is no other dwelling on the subject tract;

d. The lot of record on which the welling will be sited was lawfully created;

e. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;

f. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

g. Only gross income from land owned, not leased or rented, shall be counted.

h. Gross farm income earned from a lot of record which has been used previously to qualify another lot of record for the construction or siting of a primary farm dwelling may not be used.

i. Only lots of record zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.

j. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used to qualify any other parcel for a primary farm dwelling.

7. A dwelling customarily provided in conjunction with a commercial dairy farm, which is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(3)(a) or (4)(a), whichever is applicable, from the sale of fluid milk, if:

a. The subject tract will be employed as a commercial dairy; and

b. The dwelling is sited on the same lot of record as the buildings required by the commercial dairy; and

c. Except for a replacement of a lawfully established dwelling, there is no other dwelling on the subject tract; and

d. The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm; and

e. The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and

f. The Oregon Department of Agriculture has approved the following:

i. A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

ii. A Producer License for the sale of dairy products under ORS 621.072.

8. 160 Acre Test, subject to the following criteria:

a. The parcel on which the dwelling will be located is at least 160 acres.

b. The subject tract is currently employed in a farm use.

c. 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.

d. Except as permitted in Subsection 401.05(D)(12), there is no other dwelling on the subject tract; or

9. Capability Test, subject to the following criteria:

a. 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.

b. Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.

c. 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 Subsection 401.05(D)(9)(a).

d. The subject tract is currently employed for a farm use at a level capable of producing the annual gross sales required in Subsection 401.05(D)(9)(a).

e. The subject lot of record on which the dwelling is proposed is not less than 10 acres.

f. Except as permitted in Subsection 401.05(D)(12), there is no other dwelling on the subject tract.

g. 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.

h. 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 Subsection 401.05(D)(9)(a).

10. Dwelling not in Conjunction with a Farm Use: A dwelling for a nonfarm use may be allowed subject to the following criteria:

a. The dwelling or activities associated with the dwelling 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;

b. The dwelling will be sited on a lot of record that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils;

c. The dwelling will be sited on a lot of record lawfully created before January 1, 1993.

d. The dwelling is situated upon a parcel, or a portion of a parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable trees, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of

the tract. A 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. A parcel is not generally unsuitable because it is too small to be farmed profitably by itself. If the parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm it is considered suitable.

e. If the parcel is under forest deferral, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot of record is under forest deferral, the area is not generally unsuitable simply because it is too small to be managed for forest production profitably by itself. If a parcel can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not generally unsuitable.

f. The dwelling shall not materially alter the stability of the overall land use pattern of the area. The County shall consider the cumulative impact of possible new nonfarm dwellings and on other lots of record in the area similarly situated, subject to Oregon Administrative Rules (OAR) 660-033-0130(4)(a)(D)(i) through (iii).

g. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a "distinct agricultural area" based on topography, soils types, land use pattern, or the type of farm operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries, and the location of the subject parcel with this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area; and to the extent OAR 660-033-0130(4)(a)(D)(ii) is applicable.

h. Determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. 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 to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

i. The dwelling shall comply with such other conditions as the County considers necessary.

j. Prior to Planning Director approval for issuance of a building or manufactured dwelling permit, the applicant shall notify the County Assessor that the lot of record is no longer being used for farmland and; request the County Assessor to disqualify the lot of record for special assessment under ORS 308.370, 308.765, 321.257 to 321.381, 321.730 or 321.815 and; pay any additional tax imposed upon disqualification from special assessment. A lot of record that has been disqualified pursuant to Subsection 401.05(D)(10)(j) shall not requalify for special assessment unless, when combined with another contiguous lot of record, it constitutes a qualifying parcel.

11. Accessory Farm Dwelling – Relative: An accessory farm dwelling for a relative, and their immediate family unless otherwise specified, of the farm operator may be allowed subject to the following criteria:

a. The accessory farm dwelling shall be located on the same lot of record as the primary farm dwelling of the farm operator;

b. The accessory farm dwelling shall be located on a lawfully created lot of record;

c. The accessory farm dwelling shall be occupied by child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin, of the farm operator or the farm operator's spouse, whose assistance in the management and farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.

d. The size, type, and intensity of the farm operation shall be used to evaluate the need for the dwelling.

e. The net income derived from the farm products shall be significant and products from the farm unit shall contribute substantially to the agricultural economy, to agricultural processors and farm markets.

f. The accessory farm dwelling shall be occupied by a person or persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management of the farm use of the farm unit. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing;

g. There are no other dwellings on the lot of record that are vacant or currently occupied by persons not working on the subject farm unit that could reasonably be used as an accessory farm dwelling.

h. At any time the accessory farm dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.

i. Any lot of record land division or property line adjustment which results in the location of any accessory farm dwelling on a lot of record separate from the farm use property for which it has been established is prohibited.

12. Accessory Farm Dwellings – Year-round and Seasonal Farm Workers: An accessory farm dwelling for a nonrelative, and their immediate family unless otherwise specified, of the farm operator may be allowed subject to the following criteria:

a. The accessory farm dwelling shall be occupied by a person or persons who will be principally engaged in the farm use of the land and on other commercial farms in the area, whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator on the farm unit.

b. The accessory farm dwelling shall be located on a lawfully created lot of record;

c. The accessory farm dwelling shall be located:

i. On the same lot of record as the primary farm dwelling; or

ii. On the same tract as the primary farm dwelling when the lot of record on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots of record in the tract; or

iii. On a lot of record on which the primary 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 of record is conveyed to another party. The

manufactured dwelling may remain if it is re-approved pursuant to Section 401; or

iv. On any lot of record, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on the farm operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under Subsection 401.05(D)(12)(c)(iv) shall be removed, demolished, or converted to a nonresidential use when farm worker housing is no longer required.

v. On a lot of record on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot of record at least the size of the applicable minimum lot size and the lot of record complies with the gross farm income requirements of Subsection 401.05(D)(12)(g) or 401.05(D)(12)(h), whichever is applicable.

d. There ~~is~~ are no other dwellings on lands designated for exclusive farm use 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.

e. All multi-unit accessory dwellings shall be consistent with the intent of the Legislative Assembly as provided in ORS 215.243.

f. The primary farm dwelling to which the proposed dwelling would be accessory shall meet one of the following:

g. On Low Value Farmland, the primary farm dwelling is located on a farm operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned the lower of at least $32,500 in gross annual income from the sale of farm products or at least the midpoint of the median income range of gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon, in each of the last two years or three of the last five years or in an average of three of the last five years, or

h. On land identified as High Value Farmland, the primary farm dwelling is located on a farm operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each

of the last two years or three of the last five years or in an average of three of the last five years.

i. In determining the gross annual income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

j. Only gross annual income from land owned, not leased or rented, shall be counted.

k. Any proposed land division or property line adjustment of a lot of record for an accessory farm dwelling approved pursuant to Subsection 401.05(D)(12) shall not be approved. If it is determined that an accessory farm dwelling satisfies the requirements for a dwelling in conjunction with a farm use under Subsection 401.05(D)(5) or (6), a parcel may be created consistent with the minimum parcel size requirements in Subsection 401.07(A).

l. An accessory farm dwelling approved pursuant to Subsection 401.05(D)(12) shall not later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to Subsection 401.05(D)(10).

m. At any time the dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.

n. Any lot of record land division or property line adjustment which results in the location of any accessory farm dwelling on a lot of record separate from the farm use property for which it has been established is prohibited.

o. "Farmworker", means an individual who, for an agreed remuneration or rate of pay, performs labor, temporarily or on a continuing basis, for a person in the production of farm products, planting, cultivating or harvesting of seasonal agricultural crops; or forestation or reforestation of land, including but not limited to planting, transplanting, tubing, precommercial thinning and thinning of trees or seedlings, the clearing, piling and disposal of brush and slash and other related activities.

p. "Farmworker Housing", means housing limited to occupancy by farmworkers and their immediate families, and no dwelling unit of

which is occupied by a relative of the owner or operator of the farmworker housing.

q. "Relative", for the purposes of Subsection 401.05(D)(12), means an ancestor, lineal descendant, or whole or half sibling of the owner or operator or the spouse of the owner or operator.

r. "Farmworker Housing Owner", means a person that owns farmworker housing. It does not mean a person whose interest in the farmworker housing is that of a holder of a security interest in the housing.

13. One manufactured dwelling, residential trailer, or recreational vehicle, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling, residential trailer, or recreational vehicle shall be removed or demolished. A temporary residence approved under Subsection 401.05(D)(13) is not eligible for replacement under Subsection 401.05(D)(1). County Department of Water Environment Services on-site sewage disposal system review and removal requirements also apply.

E. Commercial Uses

1. The home occupation shall not unreasonably interfere with other uses permitted in the EFU zoning district and shall not be used as justification for a zone change.

2. A landscape contracting 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.

3. A single agri-tourism or other commercial event or activity in a calendar year that is personal to the applicant and is not transferrable by sale of the tract, subject to ORS 215.239, 215.283(4)(a), and (6) and the following:

a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings; and

b. "Incidental and subordinate", as related to agri-tourism, means that the event or activity is strictly secondary and ancillary to on-site farming in terms of income generated, area occupied, and off-site impacts; and

c. "Agri-tourism", means a commercial event or activity that is logically, physically, and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.

4. Agri-tourism for up to six events or other commercial events or activities in a calendar year that is personal to the applicant and is not transferrable by sale of the tract, subject to ORS 215.239, 215.283(4)(c), and (6) and the following:

   a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings; and

   b. "Incidental and subordinate", as related to agri-tourism, means that the event or activity is strictly secondary and ancillary to on-site farming in terms of income generated, area occupied, and off-site impacts; and

   c. "Agri-tourism", means a commercial event or activity that is logically, physically, and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.

5. A large winery with a restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year, subject to the following:

   a. Other events and activities not included in a large winery by statute shall only include commercial activities that are in conjunction with farm use;

   b. The commercial activities shall be essential to the practice of agriculture;

   c. "Incidental", as related to a winery, means that all goods and services shall be included in the 25% incidental gross sales income limit, whether provided directly by the winery or indirectly by a third party, such as but not limited to a caterer; and

   d. Goods and services provided by a restaurant on a large winery open more than 25 days per calendar year are not included in the meaning of incidental.

6. Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel that exceeds the standards of ORS 215.203(2)(b)(L) or Subsection 401.05(B)(1). The commercial activity shall be essential to the practice of agriculture.

7. Agri-tourism for up to 18 additional events or other commercial events or activities in a calendar year that occurs more frequently or for a longer

period of time, on a minimum 80 acre tract, subject to ORS 215.239, 215.283(4)(d), (5), and (6) and the following:

a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings, and

b. "Incidental and subordinate", as related to agri-tourism, means that the event or activity is strictly secondary and ancillary to on-site farming in terms of income generated, area occupied, and off-site impacts; and

c. "Agri-tourism", means a commercial event or activity that is logically, physically and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.

8. 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.

a. As part of the conditional use approval process, for the purpose of verifying the existence, continuity, and nature of the business, representatives of the business may apply to the County and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies. Alteration, restoration, or replacement of an aerial fireworks display business may be altered, restored, or replaced pursuant to Section 1206.

F. Mineral, Aggregate, Oil, and Gas Uses

1. Mineral, Aggregate, Oil and Gas Uses: Pursuant to ORS 215.298 a land use permit is required for mining more than 1000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A permit for mining of aggregate shall be issued only for a site included on an inventory acknowledged in the Comprehensive Plan for the following:

a. Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources, subject to ORS 215.298.

b. Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement; and

i. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

c. Processing of other mineral resources and other subsurface resources.

d. 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 under Section 401.

G. Transportation Uses

1. Roads, highways and other transportation facilities, and improvements not otherwise allowed under Section 401 may be established, subject to the adoption of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

2. A personal-use airport means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

H. Utility and Solid Waste Disposal Facility Uses

1. Wind energy power production systems as an accessory use, provided:

a. The system is not a commercial power generating facility;

b. No turbine has an individual rated capacity of more than 100kW, nor does the cumulative total rated capacity of the turbines comprising the installation exceed 100 kW;

c. The system complies with the Oregon Department of Environmental Quality noise standards otherwise applicable to commercial and industrial uses for quiet areas, measured at the nearest property line of the noise-sensitive use. This may be demonstrated through information provided by the manufacturer;

d. The system is prohibited if tower lighting for aviation safety is required;

e. The system will be located outside an urban growth boundary on a minimum of one acre;

f. The system does not exceed 150 feet in height from base to the height of the tower plus one blade;

g. The system is set back a distance not less than the tower height plus one blade from all property lines; and

h. Roof mounted system towers shall extend no more than an additional five feet above the highest ridge of a building's roof or 15 feet above the highest eave, whichever is higher, but shall not exceed 150 feet in height from finished grade.

2. A utility facility necessary for public service may be established as provided in ORS 215.275. A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided.

3. Composting operations and facilities allowed on high-value farmland.

a. Composting operations and facilities on high value farmland must:

i. Compost only on-farm produced compostable materials; or

ii. Compost only off-site materials and use all on-site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract; or

iii. Compost any off-site materials with on-farm produced compostables and use all on site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract; and

iv. Be an accepted farming practice in conjunction with and auxiliary to farm use on the subject tract; meaning that if off-site materials are added to on-farm produced compostables, the total amount of compost generated by the operation or facility does not exceed the amount of compost reasonably anticipated to be used on the subject tract; and

v. Limit buildings and facilities used in conjunction with the composting operation to those required for the operation of the subject facility; and

vi. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060.

b. Excess compost from operations and facilities on high value farmland may only be sold or transported if:

i. The operation or facility does not use off-site materials; and

ii. It is sold or transported to neighboring farm operations within two and one-half miles of the subject tract; and

iii. It is sold or transported in bulk loads of not less than one unit (7.5 cubic yards) in size that are transported in one vehicle.

4. Composting operations and facilities allowed on low-value farmland that constitute accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, subject to Subsection 401.05(H)(4)(a) through (b).

5. Composting operations and facilities allowed on low value farmland that do not constitute accepted farming practices and are not in conjunction with and auxiliary to an on-site farm use on the subject tract shall be subject to Section 834.

6. Commercial utility facilities for the purpose of generating power for public use by sale, but not including wind power or photovoltaic solar power generation. A power generation facility shall not preclude more than 12 acres on High Value Farmland, or more than 20 acres on Low Value Farmland, from use as a commercial agricultural enterprise unless an exception is taken pursuant to Oregon Administrative Rule 660, Division 4; and

a. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) (a private campground) or other statute or rule when the project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 401.05(A)(1) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

I. Parks, Public, and Quasi-public Uses

1. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under Subsection 401.05(I)(1). The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under Subsection 401.05(I)(1). An owner of property used for the purpose authorized in Subsection 401.05(I)(1) may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in Subsection 401.05(I)(1), "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines, or design by a person on the ground.

2. Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable. A public park may be established consistent with the provisions of ORS 195.120.

3. Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under Subsection 401.05(I)(3) may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

4. "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in Subsection 401.05(I)(4), a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society,

recognized as such by the county governing body and organized under ORS chapter 65.

5. Firearms training facility that predated September 10, 1995 as provided in ORS 197.770. Firearms training facilities shall not be sited within three miles of an Urban Growth Boundary.

6. Private parks, playgrounds, hunting and fishing preserves, and campgrounds. Except on a lot of record contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by Subsection 401.05(I)(6) shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

   a. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by Subsection 401.05(I)(6)(b).

   b. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if it is determined that the increase will comply with the standards described in Subsection 401.05(A)(1). As used in Subsection 401.05(I)(6), "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

7. Golf courses, on land determined not to be high value farmland, as defined in ORS 195.300, subject to OAR 660-033-0130(20).

J. Outdoor Gatherings

1. An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer persons that is not anticipated to continue for more than 120 hours in any three-month period. Agri-tourism and other commercial events or activities may not be permitted as mass gatherings under ORS 215.283(4).

2. Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by the Planning Commission under the provisions of ORS 433.763. Outdoor gatherings may not include agri-tourism events or activities.

K. Nonconforming Uses

1. Existing facilities wholly within a farm use zone may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of Subsection 401.05(A)(1) and OAR 660-033-0130(20), but shall not be expanded to contain more than 36 total holes.

2. In addition to and not in lieu of the authority in Section 1206 to continue, alter, restore, or replace a nonconforming use, a use formerly allowed pursuant to ORS 215.283(1)(a), as in effect before January 1, 2010, the effective date of 2009 Oregon Laws, chapter 850, section 14, may be expanded subject to:

   a. The requirements of Subsection 401.05(K)(3); and

   b. Conditional approval as provided in Subsection 401.05(A)(1).

3. A nonconforming use described in Subsection 401.05(K)(2) may be expanded if:

   a. The use was established on or before January 1, 2009; and

   b. The expansion occurs on:

      i. The lot of record on which the use was established on or before January 1, 2009; or

      ii. A lot of record that is contiguous to the lot of record described in Subsection 401.05(K)(3)(b)(i) and that was owned by the applicant on January 1, 2009.

~~401.05 PRIMARY USES ALLOWED ON LOW VALUE FARMLAND~~

~~A. Churches and cemeteries in conjunction with churches. Churches shall not be sited within three miles of an Urban Growth Boundary.~~

[Amended by Ord. ZDO-224, 5/31/11]

~~401.06 USES SUBJECT TO REVIEW BY THE PLANNING DIRECTOR~~

~~A. The following uses may only be approved where it:~~

~~1. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and~~

~~2. Will not significantly increase the cost of accepted farm or forest practices on land devoted to farm or forest use.~~

~~B. Unless specified otherwise, the following uses may be allowed on Low and High Value Farmland subject to Subsection 1305.02.~~

~~1. A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area, exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet of floor area to the processing activities within another building supporting farm uses. A processing facility shall comply with Subsection 401.10(G) and other applicable siting standards, but the standards shall not be applied in a manner that prohibits the siting of the processing facility.~~

~~2. A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in Oregon Revised Statutes (ORS) 215.203(2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.~~

~~3. Parking of seven or fewer log trucks. The term "parking" does not include a maintenance/repair facility. The parking/storage of other forestry equipment is not permitted.~~

~~4. The propagation, cultivation, maintenance and harvesting of aquatic species.~~

~~5. Dwellings and other building customarily provided in conjunction with farm uses subject to Subsection 401.09(E) or (F) and Oregon Administrative Rules 660-033-0135.~~

~~6. A dwelling 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 occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister 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 subject to Subsection 401.09(H).~~

~~7. Accessory farm dwellings customarily provided in conjunction with farm use subject to Subsection 401.09(I).~~

~~8. One single family Lot of Record dwelling on a lawfully created lot or parcel subject to Subsection 401.09(B), (C) or (D). Lot of Record dwellings proposed on High Value Farmland composed of Class I or 2, or prime or unique Soils, shall be reviewed by the Hearings Officer subject to Section 1300.~~

~~9. One manufactured dwelling, residential trailer or recreational vehicle, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative, as defined in Subsection 401.03(J), of the resident, subject to Subsection 1204.03.~~

~~10. Replacement dwelling to be used in conjunction with farm use if the existing dwelling is listed on the National Register of Historic Places (as required under ORS 358.480). The use or operation of a historic property for other than uses provided under ORS 358.480(2), including use as a separate residence or creation of a separate parcel, shall be subject to all other applicable provisions of this Section.~~

~~11. Residential home or facility as defined in ORS 197.660, in existing dwellings.~~

~~12. Farmworker housing as defined in Subsection 202, subject to Subsection 401.09(I).~~

~~13. Home occupations as provided in ORS 215.448 and Section 822.~~

~~14. Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.~~

~~15. 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.~~

~~16. Improvement 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.~~

~~17. Utility facilities necessary for public service, including wetland waste water treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275. A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided.~~

~~18. Collocation of wireless telecommunication facilities listed in Subsection 835.05(A)(2), subject to Section 835, provided such facilities include an existing tower that is over 200 feet in height.~~

~~19. Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.~~

~~20. Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community.~~

~~21. Single family dwelling, not provided in conjunction with farm use subject to Subsection 401.09(G).~~

~~22. Fire service facilities providing rural fire protection services.~~

~~C. The following uses may be allowed on Low Value Farmland subject to Subsection 1305.02.~~

~~1. Private parks, playgrounds, hunting and fishing preserves and campgrounds except as provided for in Subsection 401.08(F).~~

~~a. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds shall not include intensively developed recreational areas such as swimming pools, tennis courts, retail stores or gas stations.~~

~~b. A private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. A "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.~~

[Amended by Ord. ZDO-224, 5/31/11]

~~401.07 CONDITIONAL USES~~

~~Conditional uses may be allowed subject to review by the Hearings Officer pursuant to Section 1300. Approval shall not be granted unless the proposal complies with Section 1203 and any applicable provisions of Section 800.~~

~~A. Except for uses listed under Subsections 401.07(B)(4) and (C)(2), the use may only be approved where it:~~

~~1. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and~~

~~2. Will not significantly increase the cost of accepted farm or forest practices on land devoted to farm or forest use.~~

~~B. The following uses may be allowed on Low and High Value Farmland, subject to Subsection 401.07:~~

~~1. Commercial activities that are in conjunction with farm use but not including the processing of farm crops as provided for in Subsection 401.06(B)(1).~~

~~2. Mineral, aggregate, oil, and gas uses. Pursuant to Oregon Revised Statutes (ORS) 215.298, a land use permit is required for mining more than 1000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A permit for mining of aggregate shall be issued only for a site included on an inventory acknowledged in the Comprehensive Plan.~~

~~a. Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources, subject to ORS 215.298.~~

~~b. Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.~~

~~c. Processing of other mineral resources and other subsurface resources.~~

~~d. 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 under Subsection 401.04(I).~~

~~3. Personal use airports for airplanes and helicopter pads, including associated hangar, maintenance, and service. A personal use airport as used in this subsection means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional~~

~~basis, by invited guests and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.~~

~~4. Roads, highways and other transportation facilities, and improvements not allowed under Subsections 401.04 through 401.06. Such uses may be established, subject to the adoption of an Exception to Statewide Planning Goal 3, Agricultural Lands, and to any other applicable Statewide Planning Goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in Oregon Administrative Rules (OAR) 660-012-0035 and 660-012-0065.~~

~~5. Transmission towers over 200 feet in height. Towers supporting wireless telecommunication facilities are subject to Section 835.~~

~~6. Commercial utility facilities for the purpose of generating power for public use by sale. A power generation facility shall not preclude more than 12 acres on High Value Farmland, or more than 20 acres on Low Value Farmland, from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR 660, Division 4.~~

~~7. 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, and is subject to ORS 215.297.~~

~~8. A home occupation to host events, subject to Section 806.~~

~~9. A home occupation for canine skills training, subject to Section 836.~~

~~C. The following uses may be allowed on Low Value Farmland subject to Subsection 401.07:~~

~~1. Dog kennels.~~

~~2. A site for the disposal of solid waste approved by the governing body of a city or county or both 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.~~

~~3. Composting facilities, subject to Section 834.~~

~~4. Golf courses, on land determined not to be high value farmland, as defined in ORS 195.300.~~

~~5. Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.~~

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

401.06~~8~~ PROHIBITED ~~AND PREEXISTING~~ USES

Uses of structures and land not specifically permitted are prohibited.

~~A. Structures and uses of land not specifically mentioned in this Section.~~

~~B. Bed and Breakfast Residences and Inns.~~

~~C. Outdoor advertising displays, advertising signs or advertising structures, except as provided in Section 1010.~~

~~D. Any lot division, or property line adjustment, except those approved pursuant to Subsection 401.10 and Section 1107.~~

~~E. Subdivisions, except as provided for in Subsection 401.10(A).~~

~~F. All other legally established preexisting uses and structures not specifically permitted in Section 401 shall be nonconforming uses subject to Section 1206.~~

~~G. Preexisting uses on High Value Farmland which are located wholly within this zone may be maintained, enhanced or expanded on the same tract subject to Section 1206, except golf courses may be expanded to no more than 18 holes.~~

~~H. A nonconforming school use may be expanded subject to:~~

~~1. Section 1206; and~~

~~2. The use was established on or before January 1, 2009; and~~

~~3. The expansion occurs on:~~

~~a. The tax lot on which the school was established on or before January 1, 2009; or~~

~~b. A tax lot that is contiguous to the tax lot described in 'a' above; and that was owned by the applicant on January 1, 2009; and~~

~~4. Meets the standards as provided in Subsection 401.06(A)(1) and (2).~~

~~I. Manufactured Dwelling Parks: Redevelopment of a manufactured dwelling park with a different use shall require compliance with Subsection 825.03.~~

~~401.09 CRITERIA FOR DWELLINGS~~

~~A permanent dwelling may be established under the following applicable provisions, when the applicant provides a complete application as required in Section 401.11 and subject to Subsections 1001.01 and 1305.02. The landowner for any dwelling approved under this Section shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes ORS 30.936 or 30.937.~~

~~A. The SCS Soils Atlas for Clackamas County shall be used to determine the soil classification and soil rating for a specific lot or parcel, except:~~

~~1. For purposes of approving a Lot of Record Dwelling application, the applicant may submit a report from a soils scientist whose credentials are acceptable to the State Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and submits a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report and finds the analysis in the report to be soundly and scientifically based.~~

~~2. For Nonfarm Dwelling applications, the applicant may submit a more detailed site specific soils report from a soils scientist who is certified as a soils classifier by the ARCPACS (A Federation of Certifying Boards in Agronomy, Biology, Earth and Environmental Sciences) and submit a statement from the county Soils Section of the Water and Environment Services that finds the analysis in the report to be soundly and scientifically based.~~

~~B. Lot of Record Dwelling when determined to be located on Low Value Farmland, subject to the following criteria:~~

~~1. The lot or parcel on which the dwelling will be sited was lawfully created prior to January 1, 1985;~~

~~2. The lot or parcel has been under the continuous ownership of the present owner who either;~~

~~a. Acquired the lot or parcel prior to January 1, 1985; or~~

~~b. Acquired the lot or parcel by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985;~~

~~3. The tract on which the dwelling will be sited does not include a dwelling;~~

4. ~~The lot or parcel on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993;~~

5. ~~The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law;~~

6. ~~When the lot or parcel on which the dwelling will be sited is part of a tract, all remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;~~

7. ~~The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. The Oregon Department of Fish and Wildlife (ODFW) suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.~~

8. ~~An approval to construct a dwelling granted under this Subsection may be transferred to any other person after the effective date of the land use decision.~~

~~C. *Lot of Record Dwelling* when determined to be located on High Value Farmland consisting predominantly of Class III and IV Soil, subject to the following criteria:~~

1. ~~The lot or parcel on which the dwelling will be sited was lawfully created prior to January 1, 1985;~~

2. ~~The lot or parcel has been under the continuous ownership of the present owner who either;~~

   a. ~~Acquired the lot or parcel prior to January 1, 1985; or~~

   b. ~~Acquired the lot or parcel by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985;~~

3. ~~The tract on which the dwelling will be sited does not include a dwelling;~~

4. ~~The lot or parcel on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993;~~

~~5. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law;~~

~~6. When the lot or parcel on which the dwelling will be sited is part of a tract, all remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;~~

~~7. The tract is no more than 21 acres;~~

~~8. The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or, the tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary;~~

~~9. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or the impacts can be adequately mitigated so as not to interfere. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of impact mitigation measures, winter range is seriously considered impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.~~

~~10. An approval to construct a dwelling granted under this Subsection may be transferred to any other person after the land use decision becomes final.~~

~~D. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Prime, Unique, Class I or II Soils if a Hearings Officer review pursuant to Subsection 1300 finds the following:~~

~~1. The lot or parcel on which the dwelling will be sited was lawfully created prior to January 1, 1985;~~

~~2. The lot or parcel has been under the continuous ownership of the present owner who either;~~

~~a. Acquired the lot or parcel prior to January 1, 1985; or~~

~~b. Acquired the lot or parcel by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985;~~

~~3. The tract on which the dwelling will be sited does not include a dwelling;~~

~~4. The lot or parcel on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993;~~

~~5. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law;~~

~~6. When the lot or parcel on which the dwelling will be sited is part of a tract, all remaining portions of the tract are required to be consolidated into a single lot or parcel;~~

~~7. The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity;~~

~~8. The dwelling will comply with the provisions of 401.07(A)(1) and (2);~~

~~9. The dwelling will not materially alter the stability of the overall land use pattern in the area;~~

~~10. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. (Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet).~~

~~11. An approval to construct a dwelling granted under this Section may be transferred to any other person after the effective date of the land use decision.~~

~~E. Dwelling in Conjunction with a Farm Use on High Value Farmland: A primary farm dwelling for the farm operator may be allowed subject to the following criteria:~~

~~1. The subject tract is currently employed in farm use that produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years;~~

~~2. The lot or parcel on which the dwelling will be sited was lawfully created;~~

~~3. Except as permitted in Subsection 401.09(I), there is no other dwelling on the subject tract;~~

~~4. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;~~

~~5. In determining the gross income requirement, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract. Only gross annual income from land owned, not leased or rented, shall be counted.~~

~~6. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used again to qualify any other parcel for a primary farm dwelling.~~

~~7. Only a lot or parcel zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.~~

~~F. Dwelling in Conjunction with a Farm Use on Low Value Farmland: A primary farm dwelling for the farm operator may be allowed on low value farmland subject to the following criteria:~~

~~1. Income Test; Criteria:~~

~~a. The subject tract is currently employed for the farm use that produced at least $32,500 in gross annual income from the sale of farm products in the last two or three of the last five years;~~

~~b. Except as permitted in Subsection 401.09(I), there is no other dwelling on the subject tract;~~

~~c. The lot or parcel on which the dwelling will be sited was lawfully created;~~

~~d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;~~

~~e. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted; or~~

~~f. 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.~~

~~g. Only a lot or parcel zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.~~

~~h. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used to qualify any other parcel for a primary farm dwelling.~~

~~2. 160 Acre Test; Criteria:~~

~~a. The parcel on which the dwelling will be located is at least 160 acres;~~

~~b. The subject tract is currently employed in a farm use;~~

~~c. 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;~~

~~d. Except as permitted in Subsection 401.09(I), there is no other dwelling on the subject tract; or~~

~~3. Capability Test; Criteria:~~

~~a. 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;~~

~~b. 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 Subsection 401.09(F)(3)(a);~~

~~c. The subject tract is currently employed in farm use at a level capable of producing the annual gross sales required in Subsection 401.09(F)(3)(b);~~

~~d. The subject lot or parcel on which the dwelling is proposed is not less than 10 acres;~~

~~e. Except as permitted in Subsection 401.09(I), there is no other dwelling on the subject tract;~~

~~f. 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 Subsection 401.09(F)(3)(c).~~

~~G. Dwelling not in Conjunction with a Farm Use: A dwelling for a nonfarm use may be allowed subject to the following criteria:~~

~~1. The dwelling or activities associated with the dwelling 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 dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils;~~

~~3. The dwelling will be sited on a lot or parcel lawfully created before January 1, 1993;~~

~~4. The dwelling shall not materially alter the stability of the overall land use pattern of the area. The County shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots in the area similarly situated, subject to Oregon Administrative Rules (OAR) 660-033-0130(4)(a)(D)(i) through (iii).~~

~~a. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a "distinct agricultural area" based on topography, soils types, land use pattern, or the type of farm operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries, and the location of the subject parcel with this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area; and to the extent OAR 660-033-0130(4)(a)(D)(ii) is applicable.~~

~~b. Determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. 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 to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.~~

~~5. The dwelling shall comply with such other conditions as the County considers necessary.~~

~~6. Prior to Planning approval for issuance of a building or manufactured dwelling permit, the applicant shall notify the County Assessor that the lot or parcel is no longer being used for farmland and; request the County Assessor to disqualify the lot or parcel for special assessment under ORS 308.370, 308.765, 321.257 to 321.381, 321.730 or 321.815 and; pay any additional tax imposed upon disqualification from special assessment. A lot or parcel that has been disqualified pursuant to this Section shall not requalify for special assessment unless, when combined with another contiguous lot or parcel, it constitutes a qualifying parcel.~~

~~H. Accessory Farm Dwelling – Relative: An accessory farm dwelling for a relative of the farm operator may be allowed subject to the following criteria:~~

~~1. The accessory farm dwelling shall be located on the same lot or parcel as the primary farm dwelling of the farm operator;~~

~~2. The accessory farm dwelling shall be located on a lawfully created lot or parcel;~~

~~3. The accessory farm dwelling shall be occupied by a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin, of the farm operator or the farm operator's spouse, whose assistance in the management and farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator. The size, type, and intensity of the farm operation shall be used to evaluate the need for the dwelling;~~

~~4. The accessory farm dwelling shall be occupied by a person whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management of the farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing;~~

~~5. There are no other dwellings on the lot or parcel that are vacant or currently occupied by persons not working on the subject farm and that could reasonably be used as an accessory farm dwelling.~~

~~6. At any time the accessory farm dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.~~

~~I. Accessory Farm Dwelling – Non-Relative: An accessory farm dwelling for a nonrelative of the farm operator may be allowed subject to the following criteria:~~

~~1. The accessory farm dwelling shall be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;~~

~~2. The accessory farm dwelling shall be located on a lawfully created lot or parcel;~~

~~3. The accessory farm dwelling shall be located:~~

~~a. On the same lot or parcel as the primary farm dwelling; or~~

~~b. On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or~~

~~c. On a lot or parcel on which the primary 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 manufactured dwelling may remain if it is re-approved pursuant to Section 401; or~~

~~d. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved in this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or~~

~~e. On a parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies~~

~~with the gross farm income requirements of Subsection 401.09(E)(1) or 401.09(F)(1) whichever is applicable.~~

~~4. There is no other dwelling on lands designated for exclusive farm use 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;~~

~~5. The primary farm dwelling to which the proposed dwelling would be accessory, shall meet one of the following:~~

~~a. On Low Value Farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed in farm use, as defined in ORS 215.203, and produced at least $32,500 in gross annual income from the sale of farm products within the last two years or three of the last five years; or~~

~~b. On land identified as High Value Farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed in farm use, as defined in ORS 215.203, and produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years;~~

~~6. In determining the gross annual income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross annual income from land owned, not leased or rented, shall be counted.~~

~~7. Any proposed land division or property line adjustment of a lot or parcel for an accessory farm dwelling approved pursuant to this Subsection shall not be approved. If it is determined that an accessory farm dwelling satisfies the requirements for a dwelling in conjunction with a farm use under Subsection 401.09(E or F), a parcel may be created consistent with the minimum parcel size requirements in Subsection 401.10(A);~~

~~8. An accessory farm dwelling approved pursuant to this Subsection shall not later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to Subsection 401.06(B)(21).~~

~~9. At any time the dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.~~

[Amended by Ord. ZDO-224, 5/31/11]

401.07 DIMENSIONAL STANDARDS

A. Minimum Lot Size: New lots of record shall be a minimum of 80 acres in size, except as provided in Subsection 401.09 or as modified by Section 902. For the purpose of complying with the minimum lot size standard, lots of record that front on existing county or public roads may include the land area between the front property line and the middle of the road right-of-way.

B. Minimum Front Yard Setback: 30 feet.

C. Minimum Side Yard Setback: 10 feet.

D. Minimum Rear Yard Setback: 30 feet; however, accessory structures shall have a minimum rear yard setback of 10 feet.

E. Exceptions: Dimensional standards are subject to modification pursuant to Section 900.

F. Variances: The requirements of Subsections 401.07(B) through (D) may be modified pursuant to Section 1205.

401.08 DEVELOPMENT STANDARDS

A. Property Line Adjustments: Property line adjustments shall be subject to Section 1107.

B. Manufactured Dwelling Parks: Redevelopment of a manufactured dwelling park with a different use shall require compliance with Subsection 825.03.

401.~~10~~9 **LAND DIVISIONS**~~, DIMENSIONS AND ADJUSTMENTS~~

Land divisions are permitted, if consistent with one of the following options and~~proposed for primary uses may be permitted by the Planning Director, subject to Subsection 1305.02. All land divisions under this subsection shall be subject to~~ **Oregon Revised Statutes (ORS) Chapter 92**. ~~Lot divisions shall be processed and reviewed consistent with the following criteria:~~Except in the case of a conditional use division under Subsection 401.09(B), a land division is subject to Planning Director review pursuant to Subsection 1305.02.

A. 80-Acre Minimum Lot Size **Land Divisions**: A land division may be approved, if each new lot of record is a minimum of~~All new parcels shall be at least~~ **80 acres** in size, as established by Subsection 401.07(A). ~~Land divisions for primary uses may be permitted by the Planning Director pursuant to Subsection 1305.02.~~

B. Nonfarm Use Land Divisions: A land division creating parcels less than 80 acres in size may be approved for a fire service facility and for nonfarm uses, except dwellings, set out in ORS 215.283(2), if the parcel for the fire service facility or nonfarm use is not larger than the minimum size necessary for the use.

~~B. Conditional Use Divisions: The Hearings Officer may approve a division of land for nonfarm uses, except dwellings, set out in ORS 215.283(2) if the Hearings Officer finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. Such land divisions shall be received pursuant to Section 1300.~~

C. Nonfarm Dwelling~~Use~~ Land Divisions: Lots of record less than 80 acres in size may be approved, ~~by the Planning Director pursuant to Subsection 1305.02 and~~ subject to the following criteria:

1. The originating lot of record~~or parcel~~ is at least 80 acres, and is not stocked to the requirements under ORS 527.610 to 527.770;~~,~~

2. The lot of record is composed of at least 95% Class VI through Class VIII agricultural soils, and composed of at least 95% soils not capable of producing 50 cubic feet per acre per year of wood fiber;

3. The new lot of record~~lot or parcel~~ for a dwelling will not be smaller than 20 acres; and

4. ~~The~~No new lot of record may be created until the criteria in Subsection 401.05(D)(10)(a), (b), (f), (i), and (j) for a dwelling~~Section 401.09(G)(1,2,4,5 and 6)~~ are satisfied.

D. Parks/Open Space/Land Conservation Land Divisions: A land division for a provider of public parks or open space, or a not-for-profit land conservation organization, may be approved subject to ORS 215.263(10).

~~D. Historic property land divisions subject to Section 707.~~

E. Historic Property Land Divisions: A land division may be approved to create a parcel with an existing dwelling to be used for historic property that meets the requirements of ORS 215.283(1)(L).

~~E. Property line adjustments shall be subject to Section 1107.~~

~~F. Right of Way Inclusion: For purposes of satisfying the lot size requirements of this district, lots which front on existing county or public roads may include the land area between the front property line and the middle of the road right-of-way. Lots which front on state and federal highways may not include the land area between the front property line and the middle of the road right of way.~~

~~G. Structure Setbacks:~~

~~1. Minimum front yard setback: 30 feet.~~

~~2. Minimum rear yard setback: 30 feet~~

~~3. Minimum side yard setback: 10 feet~~

~~4. Minimum setbacks for accessory structures: Accessory structures shall maintain a minimum front yard setback of 30 feet and minimum rear and side yard setbacks of 10 feet.~~

~~5. Corner Vision: No sight-obscuring structures or plantings exceeding 30 inches in height shall be located within a 20 foot radius of the lot corner nearest the intersection of two public, county or state road, or from the intersection of a private driveway or easement and a public, county or state road. Trees located within a 20 foot radius of any such intersection shall be maintained to allow eight feet of visual clearance below the lowest hanging branches.~~

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

401.10~~1~~ SUBMITTAL REQUIREMENTS

~~A. Planning Director Review:~~ An application for any use requiring review by the Planning Director pursuant to Subsection 1305.02 shall include~~ the following~~:

A~~1~~. A complete Land Use Application f~~F~~orm;

B~~2~~. An a~~A~~ccurate s~~S~~ite p~~P~~lan drawn to scale on 8.5"x 11" or 8.5"x 14" paper, showing the property and proposal;

C~~3~~. An a~~A~~pplication fee;

D~~4~~. A Supplemental Application f~~F~~orm addressing each of the applicable approval criteria for the proposed use; and

E~~5~~. Farm dwellings requiring a justification of income shall include tax forms, farm receipts, or other appropriate documentation demonstrating the income produced from the subject property.

[Amended by Ord. ZDO-230, 9/26/11]

401.11~~2~~ APPROVAL PERIOD AND TIME EXTENSION

A. Approval Period: Approval of an administrative action under Section 401 is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented. "Implemented" means:

1. For a land division, the final plat shall be recorded with the County Clerk. If a final plat is not required under Oregon Revised Statutes Chapter 92,

deeds with the legal descriptions of the new parcels shall be recorded with the County Clerk; or

2. For all other administrative actions, a building or manufactured dwelling placement permit for a new primary structure that was the subject of the administrative action shall be obtained and maintained. If no building or manufactured dwelling placement permit is required, all other necessary County development permits shall be obtained and maintained.

B. Time Extension: If the approval of an administrative action is not implemented within the initial approval period established by Subsection 401.11~~2~~(A), a two-year time extension may be approved by the Planning Director pursuant to Subsection 1305.02, and subject to Subsection 1305.05.

C. Subsections 401.11~~2~~(A) and (B) do not apply to home occupations or conditional uses, which shall be subject to any applicable approval period and time extension provisions of Sections 822 or 1203.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

406 TIMBER DISTRICT (TBR)

406.01 PURPOSE

Section 406 is adopted to~~:~~ implement the goals and policies of the Comprehensive Plan for Forest areas.

~~A. Conserve forest lands;~~

~~B. Protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of timber as the leading use on forest land;~~

~~C. Conserve, protect, and enhance watersheds, wildlife and fisheries resources, agriculture, and recreational opportunities that are compatible with the primary intent of the zone; and~~

~~D. Minimize wildfire hazards and risks.~~

[Amended by Ord. ZDO-230, 9/26/11]

406.02 AREA OF APPLICATION

Property may be zoned Timber District when the site has a Comprehensive Plan designation of Forest, consistency with Policy 11.0 of the Forest section of Chapter 4 of the Comprehensive Plan is demonstrated, and the criteria in Section 1202 are satisfied.

~~A. Lands suitable for forest use; or~~

~~A. Lands predominantly capable of generating at least 85 cubic feet of timber per acre per year; or~~

~~C. Areas containing lots or parcels generally 80 acres or larger.~~

406.03 DEFINITIONS

Unless specifically defined in Subsection 406.03 or in Section 202, words or phrases used in Section 406 shall be interpreted to give them the same meaning as they have in common usage and to give Section 406 its most reasonable application.

A. "Auxiliary"~~:~~ ~~means~~ A~~a~~ use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and ~~is~~ not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

B. Cubic Foot Per Acre: As defined in Oregon Administrative Rules (OAR) 660-006-0005(3).

C. Cubic Foot Per Tract Per Year: As defined in OAR 660-006-0005(4).

D. Date of Creation and Existence: When a lot of record or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot of record 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 of record or tract.

E. Firearms Training Facility: An indoor facility only, that provides training courses and issues certifications required for law enforcement personnel, by the Oregon Department of Fish and Wildlife, or by nationally recognized programs that promote shooting matches, target shooting, and safety.

F. Forest Operation: Any commercial activity relating to the growing or harvesting of any forest tree species as defined in Oregon Revised Statutes (ORS) 527.620(6).

G. Navigation: References an instrument within a waterway or flightway that assists in traveling to a destination for water vessels and aircraft.

H. Owner: For purposes of a Lot of Record Dwelling, "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, nephew, niece, stepparent, stepchild, grandparent, or grandchild of the owner, or a business entity owned by any one or a combination of these family members.

I. Ownership: Holding fee title to a lot of record, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed to have ownership. Ownership shall include all contiguous lots of record meeting this definition.

J. Private Park: Land that is used for low impact casual recreational uses such as picnicking, boating, fishing, swimming, camping, hiking, or nature-oriented recreational uses such as viewing and studying nature and wildlife habitat and may include play areas and accessory facilities that support the activities listed above but does not include tracks for motorized vehicles or areas for target practice or the discharge of firearms.

K. Relative: For purposes of a Temporary Dwelling for Care, "relative" means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin of the owner.

~~L~~B. "Temporary Sstructures: " ~~include~~ Oonsite structures which are auxiliary to and used during the term of a particular forest operation and used in the preliminary processing of a particular forest operation such as: pole and piling preparation,

small portable sawmill, small pole building, etc. Temporary structures are allowed for a period not to exceed one year.

~~C."Owner" means 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.~~

~~D."Ownership" means holding fee title to a parcel, lot or tract of land, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed to have ownership. For purposes of section 406, ownership shall include all contiguous parcels, lots or tracts meeting this definition.~~

M~~E.~~"Tract: " ~~means~~ O~~o~~ne or more contiguous lots of record~~or parcels~~ under the same ownership, including lots of record divided by a County or public road, or land contiguous at a common point. Lots of record divided by a state highway are not considered contiguous.

~~F."Forest operation" means any commercial activity relating to the growing or harvesting of any forest tree species as defined in Oregon Revised Statutes (ORS) 527.620(6).~~

~~G."Cubic foot per acre per year", as defined in Oregon Administrative Rules (OAR) 660-06-005(2).~~

~~H."Cubic foot per tract per year", as defined in OAR 660-06-005(3).~~

~~I."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.~~

~~J."Historic Property", as defined in ORS 358.480.~~

[Amended by Ord. ZDO-224, 5/31/11]

406.04 USES AUTHORIZED

Table 406-1 identifies the uses authorized in the Timber District. As used in Table 406-1:

A. "A" means the use is allowed.

B. "PDR" means the use is subject to Planning Director Review pursuant to Subsection 1305.02.

C. "C" means the use is a Conditional Use, subject to Sections 1203 and 1300.

D. The "Subject To" column identifies any specific provisions of Subsection 406.05 to which the use is subject.

Table 406-1: Uses Authorized in the Timber District

	Type	Use	Subject To
FARM AND FOREST USES	A	Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash where such uses pertain to forest uses and operations. Inside the Portland Metropolitan Urban Growth Boundary, refer to Subsection 1002.04 regarding a development restriction that may apply if excessive tree removal occurs.	
	A	Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation.	
	A	Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction, or recreational facilities.	
	A	Farm use as defined in ORS 215.203.	
	A	Uses and structures customarily accessory and incidental to a farm or forest use, only if the primary farm or forest use exists.	
	PDR	Temporary portable facility for the primary processing of forest products.	406.05(B)(1)
	CU	Permanent facility for the primary processing of forest products.	406.05(A)(1) & (5)
	CU	Permanent facilities for logging equipment repair and storage.	406.05(A)(1) & (5)
	CU	Log scaling and weigh stations.	406.05(A)(1) & (5)
	Type	**Use**	**Subject To**
NATURAL RESOURCE USES	A	Uninhabitable structures accessory to fish and wildlife enhancement.	
	CU	Forest management research and experimentation facilities.	406.05(A)(1) & (C)(1)
	Type	**Use**	**Subject To**
RESIDENTIAL USES	A	Uses and structures customarily accessory and incidental to a dwelling, only if a lawfully established dwelling exists.	
	A	Alteration, restoration, or replacement of a lawfully established dwelling.	406.05(D)(1)
	PDR	Forest Lot of Record Dwelling.	406.05(A)(2), (3), (4) & (D)(2)
	PDR	Forest Template Test Dwelling.	406.05(A)(2), (3), (4) & (D)(3)
	PDR	160 Acre Forest Dwelling.	406.05(A)(2), (3), (4)

			& (D)(4)
	PDR	200 Acre Noncontiguous Tract Forest Dwelling	406.05(A)(2), (3), (4) & (D)(5)
	PDR	Caretaker residences for public parks and public fish hatcheries.	406.05(A)(2) & (4)
	PDR	Temporary forest labor camp, subject to Subsection 1204.01, for a period not to exceed one year.	
	PDR	Temporary dwelling for care, subject to Subsection 1204.03.	406.05(A)(1), (2) & (D)(6)
	Type	**Use**	**Subject To**
	A	Family daycare provider.	
COMMERCIAL USES	PDR	Home occupation, subject to Section 822.	406.05(A)(1), (2), (4) & (E)(1)
	CU	Home occupation to host events, subject to Section 806.	406.05(A)(1), (2), (4) & (E)(1)
	CU	Home occupation for canine skills training, subject to Section 836.	406.05(A)(1), (2) (4) & (E)(1)
	CU	Private accommodations for fishing on a temporary basis.	406.05(A)(1), (2), (4) & (E)(2)
	CU	Private seasonal accommodations for fee based hunting.	406.05(A)(1), (4) & (E)(3)
	Type	**Use**	**Subject To**
MINERAL, AGGREGATE, OIL, AND GAS USES	A	Exploration for mineral and aggregate resources as defined in ORS Chapter 517 and subject to the requirements of the Department of Geology and Mineral Industries.	
	CU	Mining and processing of oil, gas, or other subsurface resources.	406.05(A)(1), (5) & (F)(1)
	CU	Exploration for and production of geothermal, gas, and oil.	406.05(A)(1), (5) & (F)(2)
	Type	**Use**	**Subject To**
TRANSPORTATION USES	A	Widening of roads within existing rights-of-way in conformance with Chapter 5 of the Comprehensive Plan.	
	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.	
	A	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.	
	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.	
	A	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 public-owned property utilized to support the operation and maintenance of public roads and highways.	
	PDR	Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not	406.05(A)(1)

		resulting in the creation of new land parcels.	
	PDR	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.	406.05(A)(1)
	PDR	Improvement of public roads 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.	406.05(A)(1)
	CU	Parking of up to seven dump trucks and seven trailers, subject to ORS 215.311.	406.05(A)(1)
	CU	Aids to navigation and aviation.	406.05(A)(1) & (5)
	CU	Expansion of existing airports.	406.05(A)(1)
	CU	Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.	406.05(A)(1)
	CU	Roads, highways, and other transportation facilities and improvements not otherwise allowed under this Ordinance.	406.05(A)(1) & (G)(1)
	Type	**Use**	**Subject To**
	A	Collocation of antennas on a previously approved wireless telecommunication facility, subject to Subsection 835.04(A).	
UTILITY AND SOLID WASTE DISPOSAL FACILITY USES	A	Local distribution lines (i.e., electric, telephone, natural gas) and accessory equipment (i.e., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.	
	A	Water intake facilities, canals and distribution lines for farm irrigation and ponds.	
	A	Solar energy systems.	
	A	Rainwater collection systems as an accessory use.	
	A	Electric vehicle charging stations for residents and their nonpaying guests.	
	A	Meteorological towers.	
	PDR	Wind energy power production systems as an accessory use.	406.05(H)(1)
	PDR	Wireless telecommunication facilities listed in Subsections 835.04(B) and (C) and 835.05(A)(2) and (3), subject to Section 835.	406.05(A)(1)
	CU	Wireless telecommunication facilities listed in Subsection 835.06(A), subject to Section 835.	406.05(A)(1)
	CU	Water intake facilities, related treatment facilities, pumping stations, and distribution lines.	406.05(A)(1) & (5)
	CU	Reservoirs and water impoundments.	406.05(A)(1), (2) & (5)
	CU	A disposal site for solid waste for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities, or buildings necessary for its operation. A composting facility is subject to Section 834.	406.05(A)(1) & (5)
	CU	A disposal site for solid waste that has been ordered established by the Oregon Environmental Quality	406.05(A)(1) & (5)

		Commission under ORS 459.049, together with the equipment, facilities, or buildings necessary for its operation.	
	CU	Commercial utility facilities for the purpose of generating power.	406.05(A)(1), (5) & (H)(2)
	CU	New electric transmission lines.	406.05(A)(1) & (H)(3)
	CU	Television, microwave, and radio communication facilities.	406.05(A)(1), (5) & (H)(4)
	Type	**Use**	**Subject To**
PARKS AND PUBLIC/QUASI-PUBLIC USES	A	Private hunting and fishing operations without any lodging accommodations.	
	A	Towers and fire stations for forest fire protection.	
	CU	Fire stations for rural fire protection.	406.05(A)(1) & (5)
	CU	Youth camps on 40 acres or more, subject to OAR 660-006-0031.	406.05(A)(1) & (2)
	CU	Cemeteries.	406.05(A)(1) & (5)
	CU	Firearms training facility.	406.05(A)(1) & (5)
	CU	Private parks and campgrounds.	406.05(A)(1), (2), (5) & (I)(1)
	CU	Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.	406.05(A)(1) & (5)
	Type	**Use**	**Subject To**
	A	An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period.	406.05(J)(1)
	CU	An outdoor mass gathering of more than 3,000 persons that continues or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces.	406.05(A)(1) & (J)(2)

406.05 APPROVAL CRITERIA FOR SPECIFIC USES

The following criteria apply to some of the uses listed in Table 406-1. The applicability of a specific criterion to a listed use is established by Table 406-1.

A. General Criteria

1. The use may be allowed provided that:

   a. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; and

   b. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

2. A written statement recorded with the deed or written contract with the County or its equivalent is obtained from the land owner that recognizes

the rights of the adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and Rules.

3. An approval to construct a dwelling may be transferred to any other person after the effective date of the land use decision.

4. If road access to the use is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management (BLM), or the United States Forest Service (USFS), then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

5. A land division for the use may be approved pursuant to Subsection 406.09(D).

B. Farm and Forest Uses

1. Temporary portable facility for the primary processing of forest products grown on-site, subject to Subsection 1204.01, for a period not to exceed one year.

C. Natural Resource Uses

1. Forest management research and experimentation facilities as described by ORS 526.215 or where accessory to forest operations.

D. Residential Uses

1. Alteration, restoration, or replacement of a lawfully established dwelling that:

a. Has intact exterior walls and roof structure;

b. Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;

c. Has interior wiring for interior lights;

d. Has a heating system; and

e. In the case of replacement, is removed, demolished, or—if not a manufactured dwelling or residential trailer—converted to an allowable use within 90 days from the occupancy of the new dwelling. Manufactured dwellings and residential trailers to be replaced shall be removed from the property within 30 days from the occupancy of the new dwelling.

2. Lot of Record Dwelling, subject to the following criteria:

   a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.

   b. The lot of record on which the dwelling will be sited was acquired by the present owner:

      i. Prior to January 1, 1985; or

      ii. By devise or intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

   c. The tract on which the dwelling will be sited does not include a dwelling.

   d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.

   e. The property is not capable of producing 5,000 cubic feet per year of commercial tree species.

   f. The property is located within 1,500 feet of a public road, as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be a BLM road, or a USFS road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction, and a maintenance agreement exists between the USFS and the landowners adjacent to the road, a local government, or a state agency.

   g. The proposed dwelling is not prohibited by this Ordinance or the Comprehensive Plan, or any other provisions of law.

   h. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of adjacent common ownership land shall remain in common ownership as long as the dwelling remains as approved.

   i. The County Assessor's Office shall be notified of all approvals granted under Subsection 406.05(D)(2).

3. Forest Template Dwelling, subject to the following criteria:

   a. The lot of record on which the dwelling will be sited does not include a dwelling.

b. The lot of record upon which the dwelling is to be located was lawfully created.

c. The County Assessor's Office shall be notified of all approvals granted under Subsection 406.05(D)(3).

d. The lot of record upon which the dwelling will be sited shall pass a template test, conducted as follows:

i. A 160 acre square template shall be centered upon the subject tract. The template may be rotated around the center point to the most advantageous position. After a position has been selected, the template shall remain fixed while lots of record and dwellings are counted. If the subject tract is larger than 60 acres and abuts a road or perennial stream, the 160 acre template shall be one-quarter mile wide by one mile long, be centered upon the subject tract, and, to the maximum extent possible, have its length aligned with the road or perennial stream.

ii. If the predominant soil type on the subject tract has a forest production capability rating, as determined by the Natural Resources Conservation Service (NRCS) Internet Soils Survey of:

A) Less than 50 cubic feet per acre per year of wood fiber production, at least part of a minimum of three lots of record shall fall within the template, and a minimum of three lawfully established dwellings shall exist on the lots within the template area; or

B) 50 – 85 cubic feet per acre per year of wood fiber production, at least part of a minimum of seven lots of record shall fall within the template, and a minimum of four lawfully established dwellings shall exist on the lots within the template area; or

C) Greater than 85 cubic feet per acre per year of wood fiber production, at least part of a minimum of 11 lots of record shall fall within the template, and a minimum of five lawfully established dwellings shall exist on the lots within the template area.

iii. The following types of lots of record and dwellings shall not be counted toward satisfying the minimum number of lots of record or dwellings required pursuant to Subsection 406.05(D)(3)(d)(ii) to pass a template test:

A) Lots of record larger than 80 acres;

B) Lots of record created on or after January 1, 1993;

C) Dwellings on lots of record larger than 80 acres;

D) Dwellings constructed on or after January 1, 1993;

E) Lots of record or dwellings located within an urban growth boundary;

F) Temporary dwellings; and

G) The subject property.

iv. If the subject tract is larger than 60 acres and abutting a road or perennial stream, a minimum of one of the dwellings required by Subsection 406.05(D)(3)(d)(ii) shall be located on the same side of the road or stream as the subject tract and shall either be located within the template or within one-quarter mile of the edge of the subject tract and not outside the length of the template. If a road crosses the tract on which the dwelling will be sited, a minimum of one of the dwellings required by Subsection 406.05(D)(3)(d)(ii) shall be located on the same side of the road as the proposed dwelling.

4. 160 Acre Minimum Forest Dwelling, subject to the following criteria:

a. The tract on which the dwelling is to be sited is at least 160 acres.

b. The tract on which the dwelling will be sited does not include a dwelling.

c. The lot of record upon which the dwelling is to be located was lawfully created.

d. The County Assessor's Office shall be notified of all approvals granted under Subsection 406.05(D)(4).

5. 200 Acre Noncontiguous Dwelling, subject to the following criteria:

a. The tract on which the dwelling will be sited does not include a dwelling;

b. An owner of tracts that are not contiguous but are in Clackamas County adds together the acreage of two or more tracts that total 200 acres or more;

c. The owner submits proof of an irrevocable deed restriction, recorded in the deed records of the county, for the tracts in the 200 acres. The deed restriction shall preclude all future rights to construct a dwelling on the tracts not supporting the proposed dwelling, or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural and forest lands;

d. None of the lots of record or tracts used to total 200 acres may already contain a dwelling.

e. All lots of record or tracts used to total a minimum of 200 acres must have a Comprehensive Plan designation of Forest;

f. The lot of record upon which the dwelling is to be located was lawfully created;

g. The County Assessor's Office shall be notified of all approvals granted under Subsection 406.05(D)(5).

6. A manufactured dwelling, residential trailer, or recreational vehicle may be used for care in conjunction with an existing dwelling for the term of a health hardship suffered by the existing resident or a relative.

E. Commercial Uses

1. The home occupation shall not unreasonably interfere with other uses permitted in the zoning district in which the subject property is located and shall not be used as justification for a zone change.

2. Private accommodations for fishing occupied on a temporary basis may be allowed subject to the following:

a. Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code; and

b. Only minor incidental and accessory retail sales are permitted; and

c. Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission; and

d. Accommodations must be located within one-quarter mile of fish bearing Class I waters.

3. Private seasonal accommodations for fee hunting operations may be allowed subject to the following:

a. Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code; and

b. Only minor incidental and accessory retail sales are permitted; and

c. Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission.

F. Mineral, Aggregate, Oil, and Gas Uses

1. Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520 and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517;

2. Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators, and other customary production equipment for an individual well adjacent to a well head;

G. Transportation Uses

1. Roads, highways, and other transportation facilities and improvements not otherwise allowed under this Ordinance, with:

a. The adoption of an exception to the goal related to forest lands and to any other applicable goal with which the facility or improvement does not comply; or

b. Compliance with ORS 215.296 for those uses identified by rule of the Oregon Land Conservation and Development Commission as provided in Section 3, Chapter 529, Oregon Laws 1993.

H. Utility and Solid Waste Disposal Facility Uses

1. Wind energy power production systems as an accessory use, provided:

a. The system is not a commercial power generating facility;

b. No turbine has an individual rated capacity of more than 100kW, nor does the cumulative total rated capacity of the turbines comprising the installation exceed 100 kW;

c. The system complies with the Oregon Department of Environmental Quality noise standards otherwise applicable to commercial and industrial uses for quiet areas, measured at the nearest property line of the noise-sensitive use. This may be demonstrated through information provided by the manufacturer;

d. The system is prohibited if tower lighting for aviation safety is required;

e. The system will be located outside an urban growth boundary on a minimum of one acre;

f. The system does not exceed 150 feet in height from base to the height of the tower plus one blade;

g. The system is set back a distance not less than the tower height plus one blade from all property lines; and

h. Roof mounted system towers shall extend no more than an additional five feet above the highest ridge of a building's roof or 15 feet above the highest eave, whichever is higher, but shall not exceed 150 feet in height from finished grade.

2. Commercial utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660, Division 4. Hydroelectric facilities shall also be subject to Section 829.

3. New electric transmission lines with right-of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (i.e., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width.

4. Television, microwave, and radio communication facilities and transmission towers, provided the base of such structure shall not be closer to the property line than a distance equal to the height of the tower.

I. Parks, Public, and Quasi-Public Uses

1. Private parks and campgrounds: Campgrounds in private parks shall only be those allowed by Subsection 406.05(I)(1). A campground is an area devoted to overnight temporary use for vacation or recreational or emergency purposes, subject to the following:

a. These areas may be occupied by a tent, travel trailer or recreational vehicle;

b. These uses shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

c. The overnight temporary use in the same campground shall not exceed a total of 30 days during any consecutive six month period;

d. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.

J. Outdoor Gatherings

1. An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period, subject to ORS 433.735 through 433.760.

2. An outdoor mass gathering of more than 3,000 persons that continues or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces, shall be subject to review by the Planning Commission under the provisions of ORS 433.763.

~~406.04 PRIMARY USES~~

~~A. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash where such uses pertain to forest uses and operations. Inside the Portland Metropolitan Urban Growth Boundary, refer to Subsection 1002.04 regarding a development restriction that may apply if excessive tree removal occurs.~~

~~B. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.~~

~~C. Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities;~~

~~D. Alteration, restoration or replacement of a lawfully established dwelling;~~

~~1. The dwelling to be altered, restored, or replaced must have:~~

~~a. Intact exterior walls and roof structures;~~

~~b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;~~

~~c. Interior wiring for interior lights; and~~

~~d. A heating system.~~

~~2. The dwelling to be replaced shall be removed, demolished or, if not a manufactured dwelling or residential trailer, converted to an allowable use within 90 days from the occupancy of the new dwelling. Manufactured dwellings and residential trailers to be replaced shall be removed from the property within 30 days from the occupancy of the new dwelling.~~

~~E. Widening of roads within existing rights-of-way in conformance with the transportation element of the Comprehensive Plan including public road and highway projects as described below.~~

~~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, 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 time as no longer needed;~~

~~4. Minor betterment of existing public roads 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 public-owned property utilized to support the operation and maintenance of public roads and highways.~~

~~F. Farm uses as defined in ORS 215.203.~~

~~G. Local distribution lines (i.e., electric, telephone, natural gas) and accessory equipment (i.e., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups;~~

~~H. Private hunting and fishing operations without any lodging accommodations;~~

~~I. Towers and fire stations for forest fire protection;~~

~~J. Water intake facilities, canals and distribution lines for farm irrigation and ponds;~~

~~K. Exploration for mineral and aggregate resources as defined in ORS Chapter 517 and subject to the requirements of the Department of Geology and Mineral Industries;~~

~~L. Accessory buildings and uses customarily incidental to and in conjunction with any of the uses listed as a primary use in Subsection 406.04, may be established only if a primary use exists;~~

~~M. Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation.~~

~~N. Wireless telecommunication facilities listed in Subsection 835.04, subject to Section 835.~~

~~O. Uninhabitable structures accessory to fish and wildlife enhancement.~~

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

~~406.05 USES SUBJECT TO REVIEW BY THE PLANNING DIRECTOR~~

~~The following uses may be allowed subject to Subsection 1305.02. In addition, dwellings shall be subject to Subsection 1001.01.~~

~~A. Home Occupations, as defined in Oregon Revised Statutes (ORS) 215.448, subject to Section 822 and the following criteria:~~

~~1. The parcel upon which the home occupation is to be located is within a rural fire protection district or the applicant provides proof of a contract for residential fire protection;~~

~~2. The home occupation will not force a significant change in, significantly increase the costs of, or impede accepted farming or forest practices on agriculture or forest lands;~~

~~3. The home occupation meets the siting standards of Subsection 406.09;~~

~~4. If road access to the home occupation is by a road owned and maintained by a private party or by the Oregon Department of Forestry (ODF), the United States Bureau of Land Management (BLM), or the United States Forest Service (USFS), then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance;~~

~~5. A written irrevocable statement shall be recorded in the deed records of the county binding upon the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.~~

~~B. Lot of Record Dwelling, subject to the following criteria:~~

~~1. The lot or parcel on which the dwelling will be sited was lawfully created prior to January 1, 1985;~~

~~2. The lot or parcel on which the dwelling will be sited was acquired by the present owner:~~

~~a. Prior to January 1, 1985; or~~

~~b. By devise or intestate succession from a person who acquired the lot or parcel prior to January 1, 1985;~~

~~3. The tract on which the dwelling will be sited does not include a dwelling;~~

~~4. The lot or parcel on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993;~~

~~5. The siting requirements described in Subsection 406.09 shall be met;~~

~~6. The property is not capable of producing 5,000 cubic feet per year of commercial tree species;~~

~~7. The property is located within 1,500 feet of a public road, as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be Bureau of Land Management or Forest Service roads;~~

~~8. The proposed dwelling is not prohibited by this ordinance or the Comprehensive Plan, or any other provisions of law;~~

~~9. 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 approved.~~

~~10. The County Assessor's Office shall be notified of all approvals granted under this subsection.~~

~~11. An approval to construct a dwelling granted under this Subsection may be transferred to any other person after the land use decision becomes final.~~

~~C. Forest Template Dwelling, subject to the following criteria;~~

~~1. The parcel upon which the dwelling is to be located is within a rural fire protection district or the applicant provides proof of a contract for residential fire protection;~~

~~2. The tract on which the dwelling will be sited does not include a dwelling;~~

~~3. The siting standards described in Subsection 406.09 shall be met;~~

~~4. The parcel upon which the dwelling is to be located was lawfully created;~~

~~5. If road access to the dwelling is by a road owned and maintained by a private party or by the ODF, the BLM or the USFS, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance;~~

~~6. A written irrevocable statement shall be recorded in the deed records of the county binding upon the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937;~~

~~7. If the subject parcel is larger than 10 acres, the applicant shall submit a stocking survey report to the County Assessor and the Assessor must verify that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.~~

~~8. The tract upon which the dwelling will be sited shall pass a template test, conducted as follows:~~

~~a. A 160 acre square template shall be centered upon the subject tract. The template may be rotated around the center point to the most advantageous position. After a position has been selected, the template shall remain fixed while lots of record and dwellings are counted. If the subject tract is larger than 60 acres and abuts a road or perennial stream, the 160 acre template shall be one-quarter mile wide by one mile long, be centered upon the subject tract and, to the maximum extent possible, have its length aligned with the road or perennial stream.~~

~~b. If the predominant soil type on the subject tract has a forest production capability rating, as determined by the SCS Soils Atlas, of:~~

~~i. 0 - 49 cubic feet per acre per year of wood fiber production, at least part of a minimum of three lots of record shall fall within the template, and a minimum of three lawfully established dwellings shall exist on the lots within the template area; or~~

~~ii. 50 - 85 cubic feet per acre per year of wood fiber production, at least part of a minimum of seven lots of record shall fall within the template, and a minimum of four lawfully established dwellings shall exist on the lots within the template area; or~~

~~iii. Greater than 85 cubic feet per acre per year of wood fiber production, at least part of a minimum of 11 lots of record shall fall within the template, and a minimum of five lawfully established dwellings shall exist on the lots within the template area.~~

~~c. The following types of lots of record and dwellings shall not be counted toward satisfying Subsection 406.05(C)(8)(b):~~

~~i. Lots of record larger than 80 acres;~~

~~ii. Lots of record created on or after January 1, 1993;~~

~~iii. Dwellings on lots of record larger than 80 acres;~~

~~iv. Dwellings constructed on or after January 1, 1993;~~

~~v. Lots of record or dwellings located within an urban growth boundary; and~~

~~vi. Temporary dwellings.~~

~~vii. The subject property.~~

~~9. If the subject tract is larger than 60 acres and abutting a road or perennial stream, a minimum of one of the dwellings required by Subsection 406.05(C)(8)(b) shall be located on the same side of the road or stream as the subject tract and shall either be located within the template or within one-quarter mile of the edge of the subject tract and not outside the length of the template. If a road crosses the tract on which the dwelling will be sited, a minimum of one of the dwellings required by Subsection 406.05(C)(8)(b) shall be located on the same side of the road as the proposed dwelling.~~

~~D. Forest Dwelling, 160 Acre Minimum, subject to the following criteria:~~

~~1. The parcel upon which the dwelling is to be located is within a rural fire protection district or the applicant provides proof of a contract for residential fire protection;~~

~~2. The tract on which the dwelling is to be sited is at least 160 acres;~~

~~3. The tract on which the dwelling will be sited does not include a dwelling;~~

~~4. The siting standards described in Subsection 406.09 shall be met;~~

~~5. The parcel upon which the dwelling is to be located was lawfully created;~~

~~6. If road access to the dwelling is by a road owned and maintained by a private party or by the ODF, the BLM, or the USFS, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance;~~

7. ~~A written irrevocable statement shall be recorded in the deed records of the county binding upon the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937;~~

8. ~~If the subject parcel is larger than 10 acres, the applicant shall submit a stocking survey report to the County Assessor and the Assessor must verify that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.~~

E. ~~200 Acre Noncontiguous Dwelling, subject to the following criteria:~~

1. ~~The parcel upon which the dwelling is to be located is within a rural fire protection district or the applicant provides proof of a contract for residential fire protection;~~

2. ~~The tract on which the dwelling will be sited does not include a dwelling;~~

3. ~~An owner of tracts that are not contiguous but are in Clackamas County adds together the acreage of two or more tracts that total 200 acres or more;~~

4. ~~The owner submits proof of an irrevocable deed restriction, recorded in the deed records of the county, for the tracts in the 200 acres. The deed restriction shall preclude all future rights to construct a dwelling on the tracts not supporting the proposed dwelling, or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural and forest lands;~~

5. ~~None of the parcels or tracts used to total 200 acres may already contain a dwelling.~~

6. ~~All parcels or tracts used to total a minimum of 200 acres must have a Comprehensive Plan designation of Forest;~~

7. ~~The siting standards described in Subsection 406.09 shall be met;~~

8. ~~The parcel upon which the dwelling is to be located was lawfully created;~~

9. ~~If road access to the dwelling is by a road owned and maintained by a private party or by the ODF, the BLM, or the USFS, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance;~~

~~10. A written irrevocable statement shall be recorded in the deed records of the county binding upon the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937;~~

~~11. If the subject parcel is larger than 10 acres, the applicant shall submit a stocking survey report to the County Assessor and the Assessor must verify that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.~~

~~F. Replacement Dwellings for Historic Houses: A replacement dwelling to be used in conjunction with a farm use may be approved if the existing dwelling is listed on the National Register of Historic Places (as required under ORS 358.480). The use or operation of a historic property for other than uses provided under ORS 358.480(2), including use as a separate residence or creation of a separate parcel, shall be subject to all other applicable provisions of this section.~~

~~G. Wireless telecommunication facilities listed in Subsections 835.05(A)(2) and (3) subject to Section 835.~~

[Amended by Ord. ZDO-224, 5/31/11]

~~406.06 CONDITIONAL USES~~

~~A. Conditional uses may be allowed subject to review by the Hearings Officer pursuant to Section 1300. Approval shall not be granted unless the proposal complies with Section 1203, any applicable provisions of Section 800, and the following criteria:~~

~~1. The proposed use shall not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.~~

~~2. The proposed use shall not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel.~~

~~3. A written irrevocable statement shall be recorded in the deed records of the County binding upon the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes (ORS) 30.936 or 30.937.~~

~~4. If road access to the use is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service, then the applicant shall~~

~~provide proof of a long term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.~~

~~B. Conditional Uses:~~

~~1. Permanent facility for the primary processing of forest products;~~

~~2. Permanent facilities for logging equipment repair and storage;~~

~~3. Log scaling and weigh stations;~~

~~4. Private parks and campgrounds. Campgrounds in private parks shall only be those allowed by this subsection. A campground is an area devoted to overnight temporary use for vacation or recreational or emergency purposes, subject to the following:~~

~~a. These areas may be occupied by a tent, travel trailer or recreational vehicle;~~

~~a. These uses shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.~~

~~b. The overnight temporary use in the same campground shall not exceed a total of 30 days during any consecutive six month period;~~

~~c. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and Oregon Administrative Rules (OAR) 660 Division 4.~~

~~5. Public parks including only those uses specified under OAR 660-034-0035 subject to the state park master plan and including caretaker residences, subject to the applicable provisions of Subsections 406.05(C)(1) through (7);~~

~~6. Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520 and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517;~~

~~7. Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators, and other customary production equipment for an individual well adjacent to a well head;~~

~~8. A disposal site for solid waste for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;~~

~~9. A disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities, or buildings necessary for its operation;~~

~~10. Fire stations for rural fire protection;~~

~~11. Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660, Division 4. Hydroelectric facilities shall also be subject to Section 829.~~

~~12. Water intake facilities, related treatment facilities, pumping stations, and distribution lines;~~

~~13. Reservoirs and water impoundments;~~

~~14. Cemeteries;~~

~~15. New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (i.e., gas, oil, geothermal) with rights-of-way 50 feet or less in width;~~

~~16. Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;~~

~~17. Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations;~~

~~18. Aids to navigation and aviation;~~

~~19. Aircraft land uses, subject to Section 712 or 713;~~

~~20. Expansion of existing airports, subject to Section 712 or 713;~~

~~21. Television, microwave and radio communication facilities and transmission towers, provided the base of such structure shall not be closer to the property line than a distance equal to the height of the tower;~~

~~22. Public road and highway projects as follows:~~

~~a. Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels; and~~

~~b. 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; and~~

~~c. Improvement of public roads 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;~~

~~23. Composting facilities, subject to Section 834;~~

~~24. Wireless telecommunication facilities listed in Subsection 835.06(A), subject to Section 835;~~

~~25. Youth camps on 40 acres or more, subject to OAR 660-006-0031;~~

~~26. A home occupation to host events, subject to Section 806; and~~

~~27. A home occupation for canine skills training, subject to Section 836.~~

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

~~406.07 TEMPORARY USES~~

~~The following temporary uses may be allowed subject to Subsection 1305.02.~~

~~A. Temporary portable facility for the primary processing of forest products grown on site, subject to Subsection 1204.01, for a period not to exceed one year;~~

~~A. Temporary forest labor camp subject to Subsection 1204.01 for a period not to exceed one year;~~

~~B. A manufactured dwelling, residential trailer or recreational vehicle may be used for care in conjunction with an existing dwelling for the term of a health hardship suffered by the existing resident or a relative as defined in Subsection 406.03(C) and subject to Subsection 1204.03.~~

[Amended by Ord. ZDO-224, 5/31/11]

406.06~~8~~ PROHIBITED ~~AND PREEXISTING~~ USES

Uses of structures and land not specifically permitted are prohibited.

~~A. Structures and uses including temporary uses of land not specifically mentioned in Section 406.~~

~~A. Outdoor advertising displays, advertising signs or advertising structures except as provided in Section 1010.~~

~~B. Any land division, or property line adjustment, except those approved pursuant to Subsection 406.10.~~

~~C. Subdivisions, except as provided in Subsections 406.10(A) and (B).~~

~~D. Legally established preexisting uses and structures not specifically permitted in Section 406 shall be nonconforming uses subject to Section 1206.~~

~~E. Manufactured Dwelling Parks: Redevelopment of a manufactured dwelling park with a different use shall require compliance with Subsection 825.03.~~

[Amended by Ord. ZDO-230, 9/26/11]

406.07 DIMENSIONAL STANDARDS

A. Minimum Lot Size: New lots of record shall be a minimum of 80 acres in size, except as provided in Subsection 406.09 or as modified by Section 902. For the purpose of complying with the minimum lot size standard, lots of record that front on existing county or public roads may include the land area between the front property line and the middle of the road right-of-way.

B. Minimum Front Yard Setback: 30 feet.

C. Minimum Side Yard Setback: 10 feet.

D. Minimum Rear Yard Setback: 30 feet; however, accessory structures shall have a minimum rear yard setback of 10 feet.

E. Exceptions: Dimensional standards are subject to modification pursuant to Section 900.

F. Variances: The requirements of Subsections 406.07(B) through (D) may be modified pursuant to Section 1205.

406.0~~8~~9 DEVELOPMENT~~SITING~~ **STANDARDS** ~~FOR DWELLINGS AND STRUCTURES~~

~~A. Purpose:~~

~~1. Ensure compatibility between the new dwelling or structure and the forest and agricultural operations.~~

~~2. Minimize wildfire hazards and risks.~~

~~B. The following fire siting standards shall apply to all structures greater than 120 square feet in size including, new dwellings, and replacement dwellings not located within 100 feet of the existing dwelling except as provided for in Subsection 406.10(G)~~

~~1. The dwelling shall have a fire retardant roof.~~

~~2. The dwelling shall not be sited on a slope of greater than 40 percent.~~

~~3. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.~~

~~4. If the rural fire district or the Oregon Department of Forestry determines that an on-site water supply is required, then the following criteria shall be met:~~

~~a. Access: If a water supply such as a swimming pool, pond, stream, or lake of 4,000 gallons or more exists within 100 feet of the driveway or road and the access has an average grade of 10 percent or less and a maximum grade of 15 percent, an all-weather approach to a point within 15 feet of the water's edge shall be provided. The all-weather approach shall provide a turnaround area with a 50 foot outside radius. If this standard cannot be met, then an all-weather approach and turnaround shall be constructed as per the requirements of the local emergency services provider.~~

~~b. Identification: Emergency water supplies shall be clearly marked along the access route with a permanent county approved sign.~~

~~5. Fuel Break Standards:~~

A. Fire-Siting Standards for New Structures: Fuel-free break areas shall be provided surrounding any new structure approved pursuant to a land use application based on standards in effect on or after February 5, 1990, as follows:

1. A primary fuel-free break area shall be maintained surrounding any new structure, including any new dwelling.

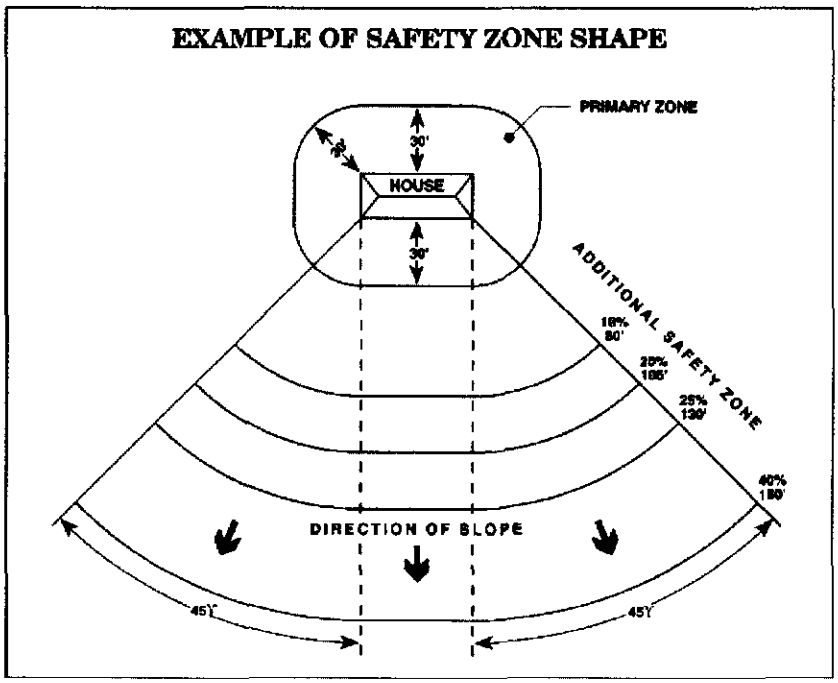
~~a. Primary Safety Zone:~~

a~~b~~. The primary safety zone is a fire fuel break extending a minimum of 30 feet in all directions around structures. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone may include green lawns and shrubs less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the structure~~house~~. As slope increases, the primary safety zone shall increase away from the structure~~house~~ and down the slope at a 45-degree angle from the structure~~house~~, in accordance with ~~the following~~ T~~t~~able 406-2 and Figure 406-1~~chart~~:

Table 406-2: Minimum Primary Safety Zone

~~Section 1.01~~ Slope	Feet of Primary Safety Zone	Feet of Additional Primary Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Figure 406-1: Example of Primary Safety Zone



b. If a structure cannot be sited on the subject property to meet this standard due to the size, shape, topography, or other physical characteristics of the property, the standard may be modified by one or both of the following alternatives:

i. Irrevocable easements for a primary safety zone may be obtained from adjacent property owners so that the primary safety zone can

be maintained. The easement(s) shall be recorded with the County Clerk; and

ii. The area of an existing road right-of-way or access easement adjacent to the subject property may be utilized to satisfy the primary safety zone requirement.

2. For any new dwelling, a secondary fuel-free break area shall be cleared and maintained on land surrounding the dwelling that is owned or controlled by the owner.

~~c. Secondary Fuel Break:~~

a~~d~~. The secondary fuel-free break extends~~is a fuel break extending a minimum of 100 feet~~ around the primary safety zone required pursuant to Subsection 406.08(A)(1). The goal of the secondary fuel-free break shall be to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel-free break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed. The minimum width of the secondary fuel-free break shall be the lesser of:

i. 100 feet; or

ii. The distance from the dwelling to the edge of land surrounding the dwelling that is owned or controlled by the owner.

~~e. If a dwelling or other structure cannot be sited on a parcel to meet these standards due to the size, shape, topography, or other physical characteristics of the property, the standards may be modified subject to the following criteria:~~

~~i. Irrevocable easements for fuel breaks are obtained from adjacent property owners so that the fuel break standards can be completed and maintained. The easement(s) shall be recorded with the County Clerk. The dwelling shall be sited a minimum of 30 feet from the front, side and rear property lines; or~~

~~i. The dwelling shall be sited a minimum of 30 feet from the front, rear and side property lines. Where a primary and secondary fuel break cannot be accomplished around the dwelling due to an inadequate setback distance, a primary fuel break shall be completed from the dwelling to the property line.~~

3~~iii.~~ ~~Dwellings and~~ ~~S~~structures within a River and Stream Conservation Area or the Willamette River Greenway shall be sited consistent with the requirements of Sections 704 and 705, respectively. Structures~~All dwellings~~ shall be sited so that a primary safety zone ~~fuel break~~ can be completed around the structure~~dwelling~~ outside of the river or stream corridor setback/buffer area. The area within the river or stream setback/buffer area shall be exempt from the secondary fuel-free break area requirements.

~~f. The area of an existing state, county, public or private road right of way adjacent to the subject property may be utilized to satisfy the fuel break requirements, providing all dwellings and structures are sited a minimum of 30 feet from the front, rear and side property lines.~~

~~g. A variance to the 30 foot front, side or rear setbacks may be allowed subject to Section 1205.~~

4~~h~~. The fuel-free break standards shall be completed and approved by the Planning Director~~Division staff~~ prior to issuance of any septic, building, or manufactured dwelling permits. Maintenance of the fuel-free breaks shall be the continuing responsibility of the property owner.

B. Additional Fire-Siting Standards for New Dwellings: The following fire-siting standards shall apply to any new dwelling approved pursuant to a land use application based on standards in effect on or after February 5, 1990.

1. The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards shall be provided. The means selected may include a fire sprinkling system, onsite equipment and water storage, or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Oregon Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fires season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

2. The dwelling shall have a fire retardant roof.

3. The dwelling shall not be sited on a slope of greater than 40 percent.

4. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

C. **Compatibility Siting Standards**: The following compatibility siting standards shall apply to any new structure, including any new dwelling, approved pursuant to a land use application based on standards in effect on or after February 5, 1990.~~Siting of development shall comply with the provisions of Sections 1002 and 1003. Conditional use and temporary structures shall be sited to minimize impact on sensitive wildlife areas identified on Table III-1, *Compatibility Criteria for Wildlife Sensitive Areas*, and Map III-2, *Scenic and Distinctive Resource Areas*, of the Comprehensive Plan, as follows:~~

1. Structures shall be sited on the subject property so that:

   a. They have the least impact on nearby or adjoining forest or agricultural lands;

   b. The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

   c. The amount of forest lands used to site access roads, service corridors, and structures is minimized; and

   d. The risks associated with wildfire are minimized.

2. Siting criteria satisfying Subsection 406.08(C)(1) may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads, and siting on that portion of the subject property least suited for growing trees.

~~1. When structures exist on adjacent properties, siting of new structures shall comply with the following prioritized techniques:~~

   ~~a. Locate new structure(s) adjacent to an existing compatible structure(s) sharing a common road. (A compatible structure, for purposes of this provision, shall be any structure which does not adversely affect the intended use of another structure); or~~

   ~~b. Where "a" above is not practical, locate adjacent to an existing structure and minimize the length of access from the nearest existing public road; or~~

   ~~c. Where "a" or "b" above are not practical, site to achieve maximum distance between structures, and minimize the length of access from the nearest existing public road.~~

~~2. Where no compatible structures exist on adjacent properties, new structures shall be sited to allow future development to satisfy Subsection 406.09(C)(1)(a).~~

~~D. Public and private access:~~

~~1. All public roads, bridges or entrances from public roads shall be subject to the Clackamas County Roadway Standards.~~

~~2. All private roads, bridges and driveways shall be subject to the local Fire District Fire Apparatus Access Road standards and County *Excavation and Grading* Ordinance.~~

3~~E~~. The applicant shall provide evidence ~~to the Planning Division~~ that the domestic water supply is from a source authorized in accordance with the Oregon Water Resources Department's (OWRD) administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Oregon Forest Practices Rules (OAR Chapter 629).

~~1. For purposes of this subsection, evidence~~Evidence of a domestic water supply means:

a. Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; ~~or~~

b. A water use permit issued by the OWRD for the use described in the application; or

c. Verification from the OWRD that a water use permit is not required for the use described in the application.

~~2.~~ If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Ceounty upon completion of the well.

D. Property Line Adjustments: Property line adjustments shall be subject to Section 1107.

E. Manufactured Dwelling Parks: Redevelopment of a manufactured dwelling park with a different use shall require compliance with Subsection 825.03.

[Amended by Ord. ZDO-224, 5/31/11]

406.~~10~~9 LAND DIVISIONS~~, DIMENSIONS AND ADJUSTMENTS~~

~~Lot~~ Land divisions ~~proposed for primary uses may be permitted by the Planning Director, subject to Subsection 1305.02. All land divisions under this subsection shall be subject to~~are permitted, if consistent with one of the following options and Oregon Revised Statutes Chapter 92. ~~Land divisions shall be processed and reviewed consistent with the following criteria~~A land division is subject to Planning Director review pursuant to Subsection 1305.02.~~:~~

A. 80-Acre Minimum Lot Size **Land Divisions**: ~~The parcel size shall be no less than 80 acres~~A land division may be approved if each new lot of record is a minimum of 80 acres in size, as established by Subsection 406.07(A).

B. Multiple Dwelling Land Divisions: A lot of record~~parcel or lot with at least two legally established dwellings~~ may be divided subject to Subsection 406.05(A)(2)~~406.05(A)(5)~~ and the following provisions:

1. At least two lawfully established dwellings existed on the lot of record ~~or parcel~~ prior to November 4, 1993;

2. Each dwelling complies with the criteria for a replacement dwelling under Subsection 406.05(D)(1)~~406.04(D)~~;

3. Except for one lot or parcel, each lot or parcel created under this provision is not less than two nor greater than five acres in size;

4. At least one of the existing dwellings is located on each lot or parcel created under this provision;

5. The landowner of a lot or parcel created under this provision provides evidence that a restriction has been recorded in the Deed Records for Clackamas County that states the landowner and the landowner's successors in interest are prohibited from further dividing the lot or parcel. This restriction shall be irrevocable unless released by the Planning Director indicating the land is no longer subject to the statewide planning goals for lands zoned for Forest use;~~.~~

6. A lot of record~~or parcel~~ may not be divided under this provision if an existing dwelling on the lot of record~~or parcel~~ was approved through a land use regulation that prohibited or required removal of the dwelling or prohibited a subsequent land division of the lot of record~~or parcel~~;~~.~~

7. Existing structures shall comply with the minimum setback standards of Subsections 406.07(B) through (D) from new property lines; and~~Dwelling setbacks shall be 30 feet from front, rear and side property lines and are not required to satisfy Subsection 406.09(B)(5). A pre-existing dwelling setback to the original property line shall not be subject to these setback standards.~~

8. The landowner shall sign a statement that shall be recorded with the County Clerk, declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

C. Homestead Dwelling Land Division: ~~.~~A land division may be approved for the establishment of a parcel for an existing dwelling, subject to the following criteria:

1. The parcel established for the existing dwelling shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

2. The dwelling existed prior to June 1, 1995;

3. The remaining parcel, not containing the existing dwelling, is:

   a. A~~a~~t least 80 acres; or

   b~~4~~. The remaining parcel, not containing the existing dwelling, is consolidated with another parcel, and together the parcels total at least 80 acres;

4~~5~~. The remaining parcel, not containing the existing dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal;~~.~~

5~~6~~. The landowner shall provide evidence that an irrevocable deed restriction on the remaining parcel, not containing the existing dwelling, has been recorded with the C~~c~~ounty C~~c~~lerk. The restriction shall state that the parcel is not entitled to a dwelling unless subsequently authorized by law or goal and shall be irrevocable unless a statement of release is signed by the ~~county~~ Planning Director that the law or goal has changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural or forest land;~~.~~ and

6~~7~~. The landowner~~land owner~~ shall sign a statement that shall be~~provide evidence that a deed restriction has been~~ recorded with the C~~c~~ounty C~~c~~lerk, declaring~~on the parcel containing the dwelling, stating~~ that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

D. Conditional Use Divisions: A land division creating parcels less than 80 acres in size may be approved for a conditional use to which Subsection 406.05(A)(5) is applicable, subject to the following criteria:~~The lot size for all conditional uses identified pursuant to Subsection 406.06(B), (1) through (14), and (18) through (22) shall be determined by the Hearings Officer who shall consider the minimum land area required for the use and accessory elements~~

~~for the use. The objective will be to minimize the impact on surrounding properties and limit the amount of land taken out of farm or forest use.~~

~~E. Land divisions created for conditional uses shall be described and recorded as approved by the county prior to any development occurring on the lots. New land divisions less than 80 acres in size may be approved only for the above described uses if those uses have been approved pursuant to Subsection 406.06(A).~~

1. The parcel created for the conditional use shall be the minimum size necessary for the use.

2. Either the conditional use was approved pursuant to Subsections 406.05(A)(1) and (2), or—for those uses not subject to Subsections 406.05(A)(1) and (2)—compliance with Subsections 406.05(A)(1) and (2) shall be demonstrated.

3. The landowner shall sign a statement that shall be recorded with the County Clerk, declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

E. Parks/Open Space/Land Conservation Divisions: A land division for a provider of public parks or open space, or a not-for-profit land conservation organization, may be approved subject to ORS 215.783. In addition, the landowner shall sign a statement that shall be recorded with the County Clerk, declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

F. Forest Practice Divisions: A land division creating parcels less than 80 acres in size may be approved, subject to the following criteria:

1. The division will facilitate a forest practice as defined in ORS 527.620.

2. There are unique property specific characteristics present in the proposed parcel that require an amount of land smaller than 80 acres in order to conduct the forest practice.

3. Parcels created pursuant to Subsection 406.09(F):

   a. Shall not be eligible for siting of a new dwelling;

   b. Shall not serve as the justification for the siting of a future dwelling on other lots of record;

   c. Shall not, as a result of the land division, be used to justify redesignation or rezoning of resource lands; and

   d. Shall not result in a parcel of less than 35 acres, except:

i. Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or

ii. Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forest land; and

e. If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than 80 acres or the minimum size required for dwellings approved under OAR 660-006-0027(2).

~~F. Property line adjustments shall be subject to Section 1107.~~

~~G. Right of Way Inclusion: For purposes of satisfying the lot size requirements of this district, lots which front on existing county or public roads may include the land area between the front property line and the middle of the road right-of-way. Lots which front on state and federal highways may not include the land area between the front property line and the middle of the road right-of-way.~~

~~H. Structure Setbacks shall be 30 feet from the front and rear property lines and 10 feet from the side property lines and are not required to satisfy Subsection 406.09(B)(5) when the following occur:~~

~~1. Replacement dwellings within 100 feet of the existing dwelling; or~~

~~1. Additions to an existing dwelling or new dwellings approved under a previous land use application where the fuel break standards were not required as a condition of approval; or~~

~~2. Additions to accessory buildings or new accessory buildings; or~~

~~3. A variance to these requirements has been approved pursuant to Section 1205.~~

~~I. General Provisions and Exceptions: Except where specifically stated, the provisions of this section shall not preclude the application of the general provisions and exceptions of Section 900.~~

[Amended by Ord. ZDO-224, 5/31/11]

406.10~~1~~ SUBMITTAL REQUIREMENTS

~~A. Planning Director Review:~~ An application for any use requiring review by the Planning Director ~~under~~ pursuant to Subsection 1305.02 shall include ~~the following~~:

A~~1~~. A complete Land Use Application f~~F~~orm;

B~~2~~. An ~~A~~accurate s~~S~~ite p~~P~~lan drawn to scale on 8.5" x 11" or 8.5" x 14" paper, showing the property and proposal;

C~~3~~. An a~~A~~pplication fee; and

D~~4~~. A Supplemental Application f~~F~~orm addressing each of the applicable approval criteria for the proposed use.

[Amended by Ord. ZDO-230, 9/26/11]

406.11~~2~~ APPROVAL PERIOD AND TIME EXTENSION

A. Approval Period: Approval of an administrative action under Section 406 is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented. "Implemented" means:

1. For a land division, the final plat shall be recorded with the County Clerk. If a final plat is not required under Oregon Revised Statutes Chapter 92, deeds with the legal descriptions of the new parcels shall be recorded with the County Clerk; or

2. For all other administrative actions, a building or manufactured dwelling placement permit for a new primary structure that was the subject of the administrative action shall be obtained and maintained. If no building or manufactured dwelling placement permit is required, all other necessary County development permits shall be obtained and maintained.

B. Time Extension: If the approval of an administrative action is not implemented within the initial approval period established by Subsection 406.11(A)~~406.12(A)~~, a two-year time extension may be approved by the Planning Director pursuant to Subsection 1305.02, and subject to Subsection 1305.05.

C. Subsections 406.11(A) and (B)~~406.12(A) and (B)~~ do not apply to home occupations or conditional uses, which shall be subject to any applicable approval period and time extension provisions of Sections 822 or 1203.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

407 AG/FOREST DISTRICT (AG/F)

407.01 PURPOSE

Section 407 is adopted to~~:~~ implement the goals and policies of the Comprehensive Plan for Forest areas.

~~A. Ensure compatibility with forest and agricultural operations; and~~

~~B. Maintain the opportunity for economically efficient forest and agricultural practices.~~

[Amended by Ord. ZDO-230, 9/26/11]

407.02 AREA OF APPLICATION

Property may be zoned Ag/Forest District when the site has a Comprehensive Plan designation of Forest, consistency with Policy 11.0 of the Forest section of Chapter 4 of the Comprehensive Plan is demonstrated, and the criteria in Section 1202 are satisfied.

~~A. Areas containing such a mixture of forest and agricultural uses that neither the statewide forest goal nor the statewide agricultural goal apply alone; or~~

~~B. Areas containing lots or parcels generally 80 acres or larger.~~

407.03 DEFINITIONS

The definitions set forth in Subsections 401.03 and 406.03 apply to Section 407. Unless specifically defined in Subsection 401.03, Subsection 406.03, or Section 202, words or phrases used in Section 407 shall be interpreted to give them the same meaning as they have in common usage and to give Section 407 its most reasonable application.

~~A. "Auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.~~

~~B. "Temporary structures" include on site structures which are auxiliary to and used during the term of a particular forest operation and used in the preliminary processing of a particular forest operation such as: pole and piling preparation; small portable sawmill, small pole building, etc. Temporary structures are allowed for a period not to exceed one year.~~

~~C. "Owner" means 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 a combination of these family members.~~

~~D. "Ownership" means holding fee title to a parcel, lot or tract of land, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed to have ownership. For purposes of Section 407.03(C), above, ownership shall include all contiguous parcels, lots or tracts meeting this definition.~~

~~E. "Tract" means one or more contiguous lots or parcels under the same ownership.~~

~~F. "Forest operation" means any commercial activity relating to the growing or harvesting of any forest tree species as defined in Oregon Revised Statutes (ORS) 527.620(6).~~

~~G. "Cubic foot per acre per year", as defined in Oregon Administrative Rules (OAR) 660-06-005(2).~~

~~H. "Cubic foot per tract per year", as defined in OAR 660-06-005(3).~~

~~I. "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.~~

~~J. "High Value Farmland", as defined in ORS 215.710.~~

~~K. "Low Value Farmland", all land not defined as High Value Farmland in ORS 215.710 and OAR 660-033-0020(8).~~

~~L. "Historic Property", as defined in ORS 358.480.~~

[Amended by Ord. ZDO-224, 5/31/11]

407.04 USES AUTHORIZED

Table 407-1 identifies the uses authorized in the Ag/Forest District. As used in Table 407-1:

A. "A" means the use is allowed.

B. "PDR" means the use is subject to Planning Director Review pursuant to Subsection 1305.02.

C. "C" means the use is a Conditional Use, subject to Sections 1203 and 1300.

D. The "Subject To" column identifies any specific provisions of Subsection 401.05 or 406.05 to which the use is subject.

Table 407-1: Uses Authorized in the Ag/Forest District

	Type	Use	Subject To
FARM AND FOREST USES	A	Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash where such uses pertain to forest uses and operations. Inside the Portland Metropolitan Urban Growth Boundary, refer to Subsection 1002.04 regarding a development restriction that may apply if excessive tree removal occurs.	
	A	Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation.	
	A	Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for the purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction, or recreational facilities.	
	A	Farm use as defined in ORS 215.203.	
	A	Uses and structures customarily accessory and incidental to a farm or forest use, only if the primary farm or forest use exists.	
	PDR	Temporary portable facility for the primary processing of forest products.	406.05(B)(1)
	PDR	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.	401.05(A)(1) & (B)(1)
	CU	Permanent facility for the primary processing of forest products.	406.05(A)(1) & (5)
	CU	Permanent facilities for logging equipment repair and storage.	406.05(A)(1) & (5)
	CU	Log scaling and weigh stations.	406.05(A)(1) & (5)
	Type	**Use**	**Subject To**
NATURAL RESOURCE USES	A	Uninhabitable structures accessory to fish and wildlife enhancement.	
	A	Creation of, restoration of, or enhancement of wetlands.	
	PDR	The propagation, cultivation, maintenance, and harvesting of aquatic species that are not under the jurisdiction of the Oregon Fish and Wildlife Commission.	401.05(A)(1) & (C)(1)

	CU	Forest management research and experimentation facilities.	406.05(A)(1) & (C)(1)
	Type	**Use**	**Subject To**
RESIDENTIAL USES	A	Uses and structures customarily accessory and incidental to a dwelling, only if a lawfully established dwelling exists.	
	A	Alteration, restoration, or replacement of a lawfully established dwelling.	406.05(D)(1)
	PDR	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a County inventory as historic property and listed on the National Register of Historic Places.	401.05(A)(3)
	PDR	Forest Lot of Record Dwelling on land that was predominantly forest on January 1, 1993.	406.05(A)(2), (3), (4) & (D)(2)
	PDR	Agricultural Lot of Record Dwelling on land that was predominantly agriculture on January 1, 1993.	401.05(A)(2), (3), (4) & (D)(2), (3), or (4)
	PDR	Agricultural Dwelling in conjunction with a farm use on High Value Farmland on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3) & (D)(5)
	PDR	Agricultural Dwelling in conjunction with a farm use on Low Value Farmland on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3) & (D)(6)
	PDR	Agricultural Dwelling customarily provided in conjunction with a commercial dairy farm on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3) & (D)(7)
	PDR	Agricultural 160 acre test for a dwelling on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3), (4) & (D)(8)
	PDR	Agricultural Capability test for a dwelling on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3), (4) & (D)(9)
	PDR	Agricultural Nonfarm dwelling on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3), (4) & (D)(10)
	PDR	Agricultural Accessory farm dwelling for a relative on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3) & (D)(11)
	PDR	Agricultural Accessory farm dwelling for year-round and seasonal farm workers on land that was predominantly agriculture on January 1, 1993.	401.05(A)(3) & (D)(12)
	PDR	Forest Template Test Dwelling on land that was predominantly forest on January 1, 1993.	406.05(A)(2), (3), (4) & (D)(3)
	PDR	160 Acre Forest Dwelling on land that was predominantly forest on January 1, 1993.	406.05(A)(2), (3), (4) & (D)(4)
	PDR	200 Acre Noncontiguous Tract Forest Dwelling on land that was predominantly forest on January 1, 1993.	406.05(A)(2), (3), (4) & (D)(5)
	PDR	Caretaker residences for public parks and public fish hatcheries.	406.05(A)(2) & (4)
	PDR	Temporary forest labor camp, subject to	

		Subsection 1204.01, for a period not to exceed one year.	
	PDR	Temporary dwelling for care, subject to Subsection 1204.03.	406.05(A)(1), (2) & (D)(6)
	PDR	Room and board arrangements for a maximum of five unrelated persons in existing dwellings.	401.05(A)(1) & (3)
	PDR	Residential home or facility as defined in ORS 197.660, in existing dwellings.	401.05(A)(1) & (3)
COMMERCIAL USES	**Type**	**Use**	**Subject To**
	A	Family daycare provider.	
	PDR	Farm stands, subject to OAR 660-033-0130(23) and ORS 215.283(1)(o).	401.05(E)(1)
	PDR	Home occupation, subject to Section 822.	406.05(A)(1), (2), (4) & (E)(1)
	PDR	A landscape contracting business.	401.05(A)(1) & (E)(2)
	PDR	Agri-tourism single event.	401.05(A)(1) & (E)(3)
	PDR	Agri-tourism for up to 6 events or activities.	401.05(A)(1) & (E)(4)
	PDR	A winery as described in ORS 215.452 or 215.453 but not a restaurant open more than 25 days per calendar year, subject to ORS 215.452 or 215.453, whichever is applicable.	
	CU	A large winery with a restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.	401.05(A)(1), (E)(5) & (6)
	CU	Home occupation to host events, subject to Section 806.	406.05(A)(1), (2), (4) & (E)(1)
	CU	Home occupation for canine skills training, subject to Section 836.	406.05(A)(1), (2), (4) & (E)(1)
	CU	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel that exceeds the standards of ORS 215.203(2)(b)(L) or Subsection 401.05(B)(1).	401.05(A)(1) & (E)(6)
	CU	Agri-tourism additional events not to exceed 18 events on a minimum of 80 acres.	401.05(A)(1) & (E)(7)
	CU	Private accommodations for fishing on a temporary basis.	406.05(A)(1), (2), (4) & (E)(2)
	CU	Private seasonal accommodations for fee based hunting.	406.05(A)(1), (4) & (E)(3)
	CU	An aerial fireworks display business.	401.05(A)(1) & (E)(8)
	CU	Dog kennels on low value farmland.	401.05(A)(1)
MINERAL, AGGREGATE, OIL, AND GAS USES	**Type**	**Use**	**Subject To**
	A	Exploration for mineral and aggregate resources as defined in ORS Chapter 517 and subject to the requirements of the Department of Geology and Mineral Industries.	
	A	Operations for the exploration for, and production of, geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an	

		individual well adjacent to a wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	A	Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	CU	Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.	401.05(A)(1), (F)(1) & (F)(1)(a)
	CU	Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement.	401.05(A)(1), (F)(1) & (F)(1)(b)
	CU	Processing of other mineral resources and other subsurface resources.	401.05(A)(1), (F)(1) & (F)(1)(c)
	CU	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 under Section 407.	401.05(A)(1), (F)(1) & (F)(1)(d)
	CU	Mining and processing of oil, gas, or other subsurface resources.	406.05(A)(1), (5) & (F)(1)
	CU	Exploration for and production of geothermal, gas, and oil.	406.05(A)(1), (5) & (F)(2)
TRANSPORTATION USES	**Type**	**Use**	**Subject To**
	A	Widening of roads within existing rights-of-way in conformance with Chapter 5 of the Comprehensive Plan.	
	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.	
	A	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.	
	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.	
	A	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 public-owned property utilized to support the operation and maintenance of public roads and highways.	
	PDR	Parking of no more than seven log trucks, subject to ORS 215.311.	401.05(A)(1)
	PDR	Construction of additional passing and travel lanes requiring the acquisition of right-of-way	406.05(A)(1)

			but not resulting in the creation of new land parcels.	
		PDR	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.	406.05(A)(1)
		PDR	Improvement of public roads 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.	406.05(A)(1)
		CU	Parking of up to seven dump trucks and seven trailers, subject to ORS 215.311.	406.05(A)(1)
		CU	Aids to navigation and aviation.	406.05(A)(1) & (5)
		CU	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance, and service facilities.	401.05(A)(1) & (G)(2)
		CU	Expansion of existing airports.	406.05(A)(1)
		CU	Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.	406.05(A)(1)
		CU	Roads, highways, and other transportation facilities and improvements not otherwise allowed under this Ordinance.	401.05(G)(1)
	UTILITY AND SOLID WASTE DISPOSAL FACILITY USES	**Type**	**Use**	**Subject To**
		A	Collocation of antennas on a previously approved wireless telecommunication facility, subject to Subsection 835.04(A).	
		A	Local distribution lines (i.e., electric, telephone, natural gas) and accessory equipment (i.e., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.	
		A	Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.	
		A	Water intake facilities, canals and distribution lines for farm irrigation and ponds.	
		A	Solar energy systems.	
		A	Rainwater collection systems as an accessory use.	
		A	Electric vehicle charging stations for residents and their non-paying guests.	
		A	Meteorological towers.	
		PDR	Wind energy power production systems as an accessory use.	406.05(H)(1)
		PDR	Wireless telecommunication facilities listed in Subsections 835.04(B) and (C) and 835.05(A)(2) and (3), subject to Section 835.	406.05(A)(1)
		PDR	Composting operations and facilities on high value farmland.	401.05(A)(1) & (H)(3)
		CU	Wireless telecommunication facilities listed in Subsection 835.06(A), subject to Section 835.	406.05(A)(1)

		CU	Composting facilities on low value farmland.	401.05(A)(1) & (H)(4)
		CU	Water intake facilities, related treatment facilities, pumping stations, and distribution lines.	406.05(A)(1) & (5)
		CU	Reservoirs and water impoundments.	406.05(A)(1), (2) & (5)
		CU	A disposal site for solid waste for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities, or buildings necessary for its operation.	406.05(A)(1) & (5)
		CU	A disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities, or buildings necessary for its operation.	406.05(A)(1) & (5)
		CU	Commercial utility facilities for the purpose of generating power.	406.05(A)(1), (5) & (H)(2)
		CU	New electric transmission lines.	406.05(A)(1) & (H)(3)
		CU	Television, microwave, and radio communication facilities.	406.05(A)(1), (5) & (H)(4)
	PARKS, PUBLIC, AND QUASI-PUBLIC USES	**Type**	**Use**	**Subject To**
		A	Private hunting and fishing operations without any lodging accommodations.	
		A	Towers and fire stations for forest fire protection.	
		A	Land application of reclaimed water, agricultural process or industrial process water, or biosolids for agricultural, horticultural, or forest production, or for irrigation in connection with a use allowed in the EFU zoning district, subject to the issuance of a license, permit, or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053, or 468B.055, or in compliance with rules adopted under ORS 468(B).095.	
		A	Onsite filming and activities accessory to onsite filming for 45 days or less.	
		PDR	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.	401.05(A)(1) & (I)(1)
		PDR	Community centers.	401.05(A)(1), (5) & (I)(3)
		PDR	Living history museum.	401.05(A)(1), (5) & (I)(4)
		PDR	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.	401.05(A)(1)
		PDR	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.	401.05(A)(1)
		PDR	Churches and cemeteries in conjunction with churches, consistent with ORS 215.441, which does not include private or parochial school	401.05(A)(5)

		education for prekindergarten through grade 12 or higher education.	
	PDR	Fire service facilities providing rural fire protection services.	401.05(A)(1)
	CU	Operations for extraction and bottling of water.	401.05(A)(1)
	CU	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.	401.05(A)(1)
	CU	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.	401.05(A)(1) & (5)
	CU	Golf courses.	401.05(A)(1), (5) & (I)(7)
	CU	Youth camps on 40 acres or more, subject to OAR 660-006-0031.	406.05(A)(1) & (2)
	CU	Cemeteries.	406.05(A)(1) & (5)
	CU	Firearms training facility.	406.05(A)(1) & (5)
	CU	Private parks and campgrounds.	406.05(A)(1), (2), (5) & (I)(1)
	CU	Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.	406.05(A)(1) & (5)
OUTDOOR GATHERINGS	**Type**	**Use**	**Subject To**
	A	An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period.	406.05(J)(1)
	CU	An outdoor mass gathering of more than 3,000 persons that continues or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces.	406.05(A)(1) & (J)(2)

~~407.04 PRIMARY USES~~

~~A. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash where such uses pertain to forest uses and operations. Inside the Portland Metropolitan Urban Growth Boundary, refer to Subsection 1002.04 regarding a development restriction that may apply if excessive tree removal occurs;~~

~~B. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;~~

~~C. Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities;~~

~~D. Alteration, restoration, or replacement of a lawfully established dwelling;~~

~~1. The dwelling to be altered, restored, or replaced must have:~~

~~a. Intact exterior walls and roof structures;~~

~~b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;~~

~~c. Interior wiring for interior lights; and~~

~~d. A heating system.~~

~~2. The dwelling to be replaced shall be removed, demolished, or, if not a manufactured dwelling or residential trailer, converted to an allowable use within 90 days from the occupancy of the new dwelling. Manufactured dwellings and residential trailers to be replaced shall be removed from the property within 30 days from the occupancy of the new dwelling.~~

~~E. Widening of roads within existing rights-of-way in conformance with the transportation element of the Comprehensive Plan including public road and highway projects as described below.~~

~~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, 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 time as no longer needed;~~

~~4. Minor betterment of existing public roads 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 public-owned property utilized to support the operation and maintenance of public roads and highways.~~

~~F. Farm uses as defined in Oregon Revised Statutes (ORS) 215.203;~~

~~G. Local distribution lines (i.e., electric, telephone, natural gas) and accessory equipment (i.e., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups;~~

~~H. Private hunting and fishing operations without any lodging accommodations;~~

~~I. Towers and fire stations for forest fire protection;~~

~~J. Water intake facilities, canals and distribution lines for farm irrigation and ponds;~~

~~K. Exploration for mineral and aggregate resources as defined in ORS Chapter 517 and subject to the requirements of the Department of Geology and Mineral Industries;~~

~~L. Accessory buildings, other than dwellings, and uses customarily incidental to and in conjunction with any of the uses listed as a primary use in Subsection 407.04, may be established only if a primary use exists;~~

~~M. Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation.~~

~~N. Residential home or facility as defined in ORS 197.660, in existing dwellings.~~

~~O. Farm Stands:~~

~~A structure designed and used for the 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 sale of the incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and 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.~~

~~P. Utility carrier cabinets, subject to Section 830.~~

~~Q. Wireless telecommunication facilities listed in Subsection 835.04, subject to Section 835.~~

~~R. Wineries as described in ORS 215.452.~~

~~S. Creation of, restoration of, or enhancement of wetlands.~~

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

~~407.05 USES SUBJECT TO REVIEW BY THE PLANNING DIRECTOR~~

~~The following uses may be allowed subject to Subsection 1305.02. In addition, dwellings shall be subject to Subsection 1001.01.~~

~~A. Home Occupations, as defined in Oregon Revised Statutes (ORS) 215.448, subject to Section 822 and the following criteria:~~

~~1. The parcel upon which the home occupation is to be located is within a rural fire protection district or the applicant provides proof of a contract for residential fire protection;~~

~~2. The home occupation will not force a significant change in, significantly increase the costs of, or impede accepted farming or forest practices on agriculture or forest lands;~~

~~3. The home occupation meets the siting standards of Subsection 407.09;~~

~~4. If road access to the home occupation is by a road owned and maintained by a private party or by the Oregon Department of Forestry (ODF), the United States Bureau of Land Management (BLM), or the United States Forest Service (USFS), then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance;~~

~~5. A written irrevocable statement shall be recorded in the deed records of the county binding upon the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.~~

~~B. Lot of Record Dwelling, subject to the following criteria:~~

~~1. The lot or parcel on which the dwelling will be sited was lawfully created prior to January 1, 1985;~~

~~2. The tract on which the dwelling will be sited does not include a dwelling;~~

~~3. The lot or parcel on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.~~

~~4. The lot or parcel on which the dwelling will be sited was acquired by the present owner (as defined in ORS 215.705(6)):~~

~~a. Prior to January 1, 1985; or~~

~~b. By devise or intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.~~

~~5. The siting standards described in Subsection 407.09 shall be met;~~

~~6. The property is not capable of producing 5,000 cubic feet per year of commercial tree species;~~

~~7. The property is located within 1,500 feet of a public road as defined under~~

~~ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be Bureau of Land Management or Forest Service roads;~~

~~8. The proposed dwelling is not prohibited by this Ordinance or the Comprehensive Plan, or any other provisions of law;~~

~~9. 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 approved.~~

~~10. The County Assessor's Office shall be notified of all approvals granted under this Subsection.~~

~~11. An approval to construct a dwelling granted under this Subsection may be transferred to any other person after the land use decision becomes final.~~

~~12. In cases where agriculture was the predominant use of the property on January 1, 1993, Lot of Record Dwellings shall satisfy the standards identified under Subsection 401.09B, C or D.~~

~~C. Forest Template Dwelling, subject to the following criteria:~~

~~1. The parcel upon which the dwelling is to be located is within a rural fire protection district or the applicant provides proof of a contract for residential fire protection;~~

~~2. The tract on which the dwelling will be sited does not include a dwelling;~~

~~3. The siting standards described in Subsection 407.09 shall be met;~~

~~4. The parcel upon which the dwelling is to be located was lawfully created;~~

~~5. If road access to the dwelling is by a road owned and maintained by a private party or by the ODF, the BLM, or the USFS, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance;~~

~~6. A written irrevocable statement shall be recorded for the county binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.~~

~~7. If the subject parcel is larger than 10 acres, the applicant shall submit a stocking survey report to the County Assessor and the Assessor must verify that the minimum stocking requirements adopted under ORS~~

~~527.610 to 527.770 have been met.~~

~~8. The tract on which the dwelling will be sited shall pass a template test, which shall be conducted as follows:~~

~~a. A 160 acre square template shall be centered on the subject tract. The template test may be rotated around the center point to the most advantageous position. After a position has been selected, the template shall remain fixed while lots of record and dwellings are counted. If the subject tract is larger than 60 acres and abuts a road or perennial stream, the 160 acre template shall be one-quarter mile wide by one mile lone, be centered on the subject tract and, to the maximum extent possible, have its length aligned with the road or perennial stream.~~

~~b. If the predominant soil type on the subject tract has a forest production capability rating, as determined by the SCS Soils Atlas, of:~~

~~i. 0 - 49 cubic feet per acre per year of wood fiber production, at least part of a minimum of three lots of record shall fall within the template, and a minimum of three lawfully established dwellings shall exist on the lots; or~~

~~ii. 50 - 85 cubic feet per acre per year of wood fiber production, at least part of a minimum of seven lots of record shall fall within the template, and a minimum of four lawfully established dwellings shall exist on the lots; or~~

~~iii. Greater than 85 cubic feet per acre per year of wood fiber production, at least part of a minimum of 11 lots of record shall fall within the template, and a minimum of five lawfully established dwellings shall exist on the lots.~~

~~c. The following types of lots of record and dwellings shall not be counted toward satisfying Subsection 407.05(C)(8)(b):~~

~~i. Lots of record larger than 80 acres;~~

~~ii. Lots of record lawfully created on or after January 1, 1993;~~

~~iii. Dwellings on lots of record larger than 80 acres;~~

~~iv. Dwellings constructed on or after January 1, 1993;~~

~~v. Lots of record or dwellings located within an urban growth boundary; and~~

~~vi. Temporary dwellings.~~

~~vii. The subject property.~~

~~9. If the subject tract is larger than 60 acres and abutting a road or perennial stream, a minimum of one of the dwellings required by Subsection 407.05(C)(8)(b) shall be located on the same side of the road or stream as the subject tract and shall either be located within the template or within one-quarter mile of the edge of the subject tract and not outside the length of the template. If a road crosses the tract on which the dwelling will be sited, a minimum of one of the dwellings required by Subsection 407.05(C)(8)(b) shall be located on the same side of the road as the proposed dwelling.~~

~~10. In cases where agriculture was the predominant use of the property on January 1, 1993, requests for a dwelling shall meet the applicable standards identified under 401.09B - G.~~

~~D. Forest Dwelling - 160 Acre Minimum, subject to the following criteria:~~

~~1. The parcel upon which the dwelling is to be located is within a rural fire protection district or the applicant provides proof of a contract for residential fire protection;~~

~~2. The tract on which the dwelling will be sited is at least 160 acres;~~

~~3. The tract on which the dwelling will be sited does not include a dwelling;~~

~~4. The siting standards described in Subsection 407.09 shall be met;~~

~~5. The parcel upon which the dwelling is to be located was lawfully created;~~

~~6. If road access to the dwelling is by a road owned and maintained by a private party or by the ODF, the BLM, or the USFS, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance;~~

~~7. A written irrevocable statement shall be recorded with the deed records for the county binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937;~~

~~8. If the subject parcel is larger than 10 acres, the applicant shall submit a stocking survey report to the County Assessor and the Assessor must verify that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.~~

~~9. In cases where agriculture was the predominant use of the property on~~

~~January 1, 1993, requests for a dwelling shall meet the applicable standards identified under 401.09E - G.~~

~~E. 200 Acre Noncontiguous Tract Dwelling, subject to the following criteria:~~

~~1. The parcel upon which the dwelling is to be located is within a rural fire protection district or the applicant provides proof of a contract for residential fire protection;~~

~~2. The tract on which the dwelling will be sited does not include a dwelling;~~

~~3. An owner of tracts that are not contiguous but are in Clackamas County adds together the acreage of two or more tracts that total 200 acres or more;~~

~~4. The owner submits proof of an irrevocable deed restriction, recorded with the County Clerk, for the tracts in the 200 acres. The deed restrictions shall preclude all future rights to construct a dwelling on the tracts not supporting the proposed dwelling, or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural and forest lands;~~

~~5. None of the parcels or tracts used to total 200 acres may already contain a dwelling;~~

~~6. All parcels or tracts used to total a minimum of 200 acres must have a Comprehensive Plan designation of Forest;~~

~~7. The siting standards described in Subsection 407.09 shall be met;~~

~~8. The parcel upon which the dwelling is to be located was lawfully created;~~

~~9. If road access to the dwelling is by a road owned and maintained by a private party or by the ODF, the BLM, or the USFS, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance;~~

~~10. A written irrevocable statement shall be recorded with the deed records for the county binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937;~~

~~11. If the subject parcel is larger than 10 acres, the applicant shall submit a stocking survey report to the County Assessor and the Assessor must verify that the minimum stocking requirements adopted under ORS~~

~~527.610 to 527.770 have been met.~~

~~12. In cases where agriculture was the predominant use of the property on January 1, 1993, requests for a dwelling shall meet the applicable standards identified under 401.09B – G.~~

~~F. Accessory Farm Dwelling – Relative: An accessory farm dwelling for a relative of the farm operator may be allowed when agriculture was the predominant use of the property on January 1, 1993 subject to the following criteria:~~

~~1. The accessory farm dwelling shall be located on the same lot or parcel as the primary farm dwelling of the farm operator;~~

~~2. The accessory farm dwelling shall be located on a lawfully created lot or parcel;~~

~~3. The accessory farm dwelling shall be occupied by a grandparent, step-grandparent, grandchild, parent, step-parent, child, brother, sister, sibling, step-sibling, niece, nephew or first cousin of the farm operator of the farm operator's spouse, whose assistance in the management and farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator and not the personal conditions of the farm operator. The size, type, and intensity of the farm operation shall be used to evaluate the need for the dwelling;~~

~~4. The accessory farm dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management of the farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day to day decisions about such things as planting, harvesting, feeding and marketing;~~

~~5. There are no other dwellings on the lot or parcel that are vacant or currently occupied by persons not working on the subject farm and that could reasonably be used as an accessory farm dwelling;~~

~~6. At any time the accessory farm dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within ninety (90) days.~~

~~7. The accessory farm dwelling shall be sited in a manner which minimizes negative impacts on farm uses, and also minimizes impacts on sensitive wildlife areas identified on Comprehensive Plan Table III-1, *Compatibility Criteria for Wildlife Sensitive Areas*, and Comprehensive Plan Map III-4,~~

~~*Stevens Great Blue Heron Rookery*, using siting techniques a-c under Subsection 407.09(C)(1);~~

~~8. Where no compatible structure(s) exist on adjacent properties, new structures shall be sited to allow future development to satisfy Subsection 407.09(C)(1)(a) above.~~

~~9. The County shall not approve any lot division or property line adjustment which results in the location of any accessory farm dwelling on a lot or parcel separate from the farm use property for which it has been established.~~

~~G. Accessory Farm Dwelling—Non-relative: An accessory farm dwelling for a non-relative of the farm operator may be allowed when agriculture was the predominant use of the property on January 1, 1993, subject to the following criteria:~~

~~1. The accessory farm dwelling shall be occupied by a person or persons who will be principally engaged in the farm use of the land whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;~~

~~2. The accessory farm dwelling shall be located on a lawfully created lot or parcel;~~

~~3. The accessory farm dwelling shall be located:~~

~~a. On the same lot or parcel as the primary farm dwelling; or~~

~~b. On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or~~

~~c. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is a manufactured dwelling and a deed restriction if 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 the subsection must be occupied by a person or persons who is principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use is required by the farm operator. The manufactured dwelling may remain if it is re-approved pursuant to this subsection.~~

~~d. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code~~

~~or similar types of farm labor housing as existing farm labor housing on the farm operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved in this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or~~

~~e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements of Subsection 401.09(E)(1) or 401.09(F)(1) whichever is applicable.~~

~~4. There is no other dwelling on lands designated agricultural forest 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;~~

~~5. The primary farm dwelling to which the proposed dwelling would be accessory, shall meet one of the following:~~

~~a. On land identified as Low Value Farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed in a farm use, as defined in ORS 215.203, and produced at least $32,500 in gross annual income from the sale of farm products within the last two years or three of the last five years; or~~

~~b. On land identified as High Value farmland, the primary dwelling is located on a farm or ranch operation that is currently employed in a farm use, as defined in ORS 215.203, and produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years;~~

~~6. In determining the gross annual income, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract. Only gross annual income from land owned, not leased or rented, shall be counted;~~

~~7. Any proposed land division or property line adjustment of a lot or parcel for an accessory farm dwelling approved pursuant to this Subsection, except as it would be consistent with Subsection 407.10(A) or (D), shall not be approved;~~

~~8. An accessory farm dwelling approved under this Subsection shall not later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use subject to Subsection 401.06(B)(10).~~

~~9. At any time the accessory farm dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within ninety (90) days.~~

~~10. The County shall not approve any land division or property line adjustment which results in the location of any accessory farm dwelling on a lot or parcel separate from the farm use property for which it has been established.~~

~~H. Aquatic Species: The propagation, cultivation, maintenance, and harvesting of, are subject to the following criteria. Removal of any aggregate in conjunction with this use is subject to all standards of this ordinance:~~

~~1. The use will not force a significant change in accepted farm or forest practices on surrounding land devoted to farm or forest use;~~

~~2. The use will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.~~

~~I. Farm Dwellings, subject to the following criteria:~~

~~1. A dwelling in conjunction with a farm use may be approved by the Planning Director subject to Subsection 1305.02, if the requirements of Subsection 401.09 are met.~~

~~J. Dwellings and related structures authorized by 407.05(I), where the predominant use is forestry shall be subject to the siting standards of Subsection 407.09.~~

~~K. Replacement Dwellings for Historic Houses: A replacement dwelling to be used in conjunction with a farm use may be approved if the existing dwelling is listed on the National Register of Historic Places (as required under ORS 358.480). The use or operation of a historic property for other than uses provided under ORS 358.480(2), including use as a separate residence or creation of a separate parcel, shall be subject to all other applicable provisions of this section.~~

~~L. Wireless telecommunication facilities listed in Subsections 835.05(A)(2) and (3) subject to Section 835.~~

[Amended by Ord. ZDO-224, 5/31/11]

~~407.06 CONDITIONAL USES~~

~~A. Conditional uses may be allowed subject to review by the Hearings Officer pursuant to Section 1300. Approval shall not be granted unless the proposal~~

~~complies with Section 1203, any applicable provisions of Section 800, and the following criteria:~~

~~1. The proposed use shall not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.~~

~~2. The proposed use shall not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel.~~

~~3. A written irrevocable statement shall be recorded with the deed records of the County binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes 30.936 or 30.937.~~

~~4. If road access to the use is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.~~

~~B. Conditional Uses:~~

~~1. Permanent facility for the primary processing of forest products;~~

~~2. Permanent facilities for logging equipment repair and storage;~~

~~3. Log scaling and weigh stations;~~

~~4. Private parks and campgrounds: Campgrounds in private parks shall only be those allowed by this subsection. A campground is an area devoted to overnight temporary use for vacation or recreational or emergency purposes but not for residential purposes, subject to the following:~~

~~a. These areas may be occupied by a tent, travel trailer or recreational vehicle;~~

~~b. These uses shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations and not for residential purposes;~~

~~c. Overnight temporary use in the same campground shall not exceed a total of 30 days during any consecutive six month period.~~

~~d. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban~~

~~growth boundary unless an exception is approved pursuant to Oregon Revised Statutes (ORS) 197.732 and Oregon Administrative Rules (OAR) 660 Division 4.~~

~~5. Public parks including only those uses specified under OAR 660-034-0035 subject to the state park master plan and including caretaker residences, subject to the applicable provisions of Subsections 407.05(B)(1) through (7);~~

~~6. Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520 and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517;~~

~~7. Exploration for mineral and aggregate resources as defined in ORS Chapter 517;~~

~~8. Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators, and other customary production equipment for an individual well adjacent to the wellhead;~~

~~9. A disposal site for solid waste for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities, or buildings necessary for its operation;~~

~~10. A disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities, or buildings necessary for its operation;~~

~~11. Fire stations for rural fire protection;~~

~~12. Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660, Division 4. Hydroelectric facilities shall also be subject to Section 829;~~

~~13. Water intake facilities, related treatment facilities, pumping stations, and distribution lines;~~

~~14. Reservoirs and water impoundments;~~

~~15. Cemeteries;~~

~~16. New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (i.e., gas, oil, geothermal) with rights-of-way 50 feet or less in width;~~

~~17. Forest management research and experimentation facilities as defined by~~

~~ORS 526.215 or where accessory to forest operations;~~

~~18. Aids to navigation and aviation;~~

~~19. Personal-use airports for airplanes and helicopter pads, including associated hanger, maintenance, and service facilities. A personal-use airport as used in this subsection means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by invited guests and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation;~~

~~20. Television microwave and radio communication facilities and transmission towers, provided the base of such structure shall not be closer to the property line than a distance equal to the height of the tower;~~

~~21. Wireless telecommunication facilities listed in Subsection 835.06(A), subject to Section 835;~~

~~22. Public road and highway projects as follows:~~

~~a. Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels; and~~

~~b. 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; and~~

~~c. Improvement of public roads 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; and~~

~~d. Roads, highways and other transportation facilities, and improvements not otherwise allowed under this ordinance, provided an exception is taken to Statewide Planning Goals 3 and 4, and any other Statewide Planning Goal with which the facility or improvement does not comply;~~

~~23. Composting facilities, subject to Section 834;~~

~~24. Youth camps on 40 acres or more, subject to OAR 660-006-0031;~~

~~25. Commercial activities that are in conjunction with farm use;~~

~~26. Dog kennels not as described in Subsection 401.05(A);~~

~~27. Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources, subject to ORS 215.298;~~

~~28. Processing, as defined by ORS 517.750, of aggregate into asphalt or Portland cement;~~

~~29. Public or private schools, including all buildings essential to the operation of a school. Schools shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660-04;~~

~~30. Churches, and cemeteries in conjunction with churches. Churches shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660-04;~~

~~31. Golf courses located on Low Value Farmland and subject to Subsections 401.04(A)(4) and (8). Existing golf courses on High Value Farmland shall not be expanded to contain more than 18 holes. A golf course shall be subject to the following:~~

~~a. A golf course is an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. Golf courses approved under this provision shall be 9- or 18-hole regulation golf courses or a combination 9- and 18-hole regulation golf course;~~

~~b. A regulation 18-hole golf course is characterized as a site containing between 120 and 150 acres of land or more, with a playable distance of 5000 to 7200 yards, and a par of 64 to 73 strokes;~~

~~c. A regulation 9-hole golf course is characterized as a site containing between 65 and 90 acres of land or more, with a playable distance of 2500 to 3600 yards, and a par of 32 to 36 strokes;~~

~~d. An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18-hole or larger~~

~~golf course.~~

~~e. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing, such as tennis courts; swimming pools; weight rooms; wholesale or retail operations oriented to the non-golfing public; housing.~~

~~f. Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g. food and beverage service, pro shop, etc.) shall be located in the clubhouse rather than in separate buildings;~~

~~32. Farmworker housing, subject to Subsection 407.05(G);~~

~~33. A home occupation to host events, subject to Section 806;~~

~~34. A home occupation for canine skills training, subject to Section 836.~~

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

~~407.07 TEMPORARY USES~~

~~The following temporary uses may be allowed subject to Subsection 1305.02.~~

~~A. Temporary portable facility for the primary processing of forest products grown on site subject to Subsection 1204.01, for a period not to exceed one year;~~

~~B. Temporary forest labor camp subject to Subsection 1204.01, for a period not to exceed one year;~~

~~C. A manufactured dwelling, residential trailer or recreational vehicle may be used for care, in conjunction with an existing dwelling for the term of a health hardship suffered by the existing resident or a relative as defined in 407.03(C) and subject to Subsection 1204.03.~~

[Amended by Ord. ZDO-224, 5/31/11]

407.05~~8~~ PROHIBITED ~~AND PREEXISTING~~ USES

Uses of structures and land not specifically permitted are prohibited.

~~A. Structures and uses, including temporary uses of land, not specifically mentioned in Section 407.~~

~~B. Outdoor advertising displays, advertising signs or advertising structures except as provided in Sections 1010.~~

~~C. Any land division, or property line adjustment, except those approved pursuant to Subsection 407.10.~~

~~D. Subdivisions except as provided in Subsections 407.10(A) and (B).~~

~~E. Legally established preexisting uses and structures not specifically permitted in Section 407 shall be nonconforming uses subject to Section 1206.~~

~~F. Preexisting uses on High Value Farmland which are located wholly within this zone may be maintained, enhanced or expanded on the same tract subject to Section 1206, except golf courses may be expanded to no more than 18 holes.~~

~~G. Manufactured Dwelling Parks: Redevelopment of a manufactured dwelling park with a different use shall require compliance with Subsection 825.03.~~

[Amended by Ord. ZDO-230, 9/26/11]

407.06 DIMENSIONAL STANDARDS

Subsection 406.07, which establishes dimensional standards in the Timber District, shall apply in the Ag/Forest District.

407.07 DEVELOPMENT STANDARDS

Subsection 406.08, which establishes development standards in the Timber District, shall apply in the Ag/Forest District.

~~407.09 SITING STANDARDS FOR DWELLINGS AND STRUCTURES IN THE AG/F DISTRICT~~

~~A. Purpose:~~

~~1. Ensure compatibility between the new dwelling and the forest and agricultural operations.~~

~~2. Minimize wildfire hazards and risks.~~

~~B. Fire Siting Standards: The following fire siting standards shall apply to all structures greater than 120 square feet in size including, new dwellings, and replacement dwellings not located within 100 feet of the existing dwelling in a forest zone, except as provided for in Subsection 407.10(G).~~

~~1. The dwelling shall have a fire retardant roof.~~

~~2. The dwelling shall not be sited on a slope of greater than 40 percent.~~

~~3. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.~~

~~4. If the rural fire district or the Oregon Department of Forestry determines that an on-site water supply is required, then the following criteria shall be met:~~

~~a. Access:~~

~~If a water supply such as a swimming pool, pond, stream, or lake of 4,000 gallons or more exists within 100 feet of the driveway or road and the access has an average grade of 10 percent or less and a maximum grade of 15 percent, an all-weather approach to a point within 15 feet of the water's edge shall be provided. The all-weather approach shall provide a turnaround area with a 50 foot outside radius. If this standard cannot be met, then an all-weather approach and turnaround shall be constructed as per the requirements of the local emergency services provider.~~

~~b. Identification:~~

~~Emergency water supplies shall be clearly marked along the access route with a permanent county approved sign.~~

~~5. Fuel Break Standards~~

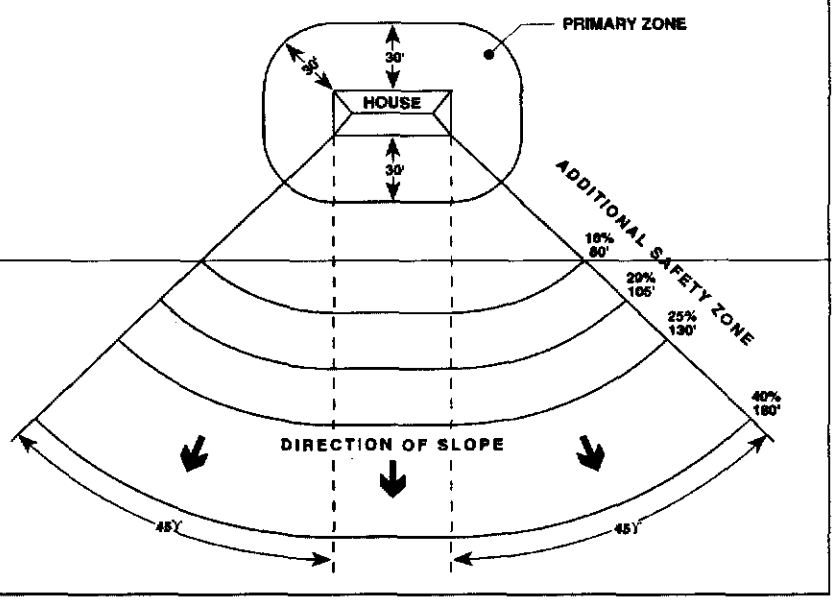
~~a. Primary Safety Zone:~~

~~The primary safety zone is a fire break extending a minimum of 30 feet in all directions around structures. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone may include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house. As slope increases, the primary safety zone shall increase away from the house and down the slope at a 45 degree angle from the house, in accordance with the following table and chart:~~

~~Slope~~	~~Feet of Primary Safety Zone~~	~~Feet of Additional Safety Zone Down Slope~~
~~0%~~	~~30~~	~~0~~

~~10%~~	~~30~~	~~50~~
~~20%~~	~~30~~	~~75~~
~~25%~~	~~30~~	~~100~~
~~40%~~	~~30~~	~~150~~

EXAMPLE OF SAFETY ZONE SHAPE



~~b. Secondary Fuel Break:~~

~~The secondary fuel break extending a minimum of 100 feet around the primary safety zone. The goal of the secondary fuel break shall be to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.~~

~~c. If a dwelling or other structure cannot be sited on a parcel to meet these standards due to the size, shape, topography, or other physical characteristics of the property, the standards may be modified subject to the following criteria:~~

~~i. Irrevocable easements for fuel breaks are obtained from adjacent property owners so that the fuel break standards can be completed~~

~~and maintained. The easement(s) shall be recorded with the County Clerk. The dwelling shall be sited a minimum of 30 feet from the front, side and rear property lines, or;~~

~~ii. The dwelling shall be sited a minimum of 30 feet from the front, rear and side property lines. Where a primary and secondary fuel break cannot be accomplished around the dwelling due to an inadequate setback distance, a primary fuel break shall be completed from the dwelling to the property line.~~

~~iii. Dwellings and structures within a River and Stream Conservation Area or the Willamette River Greenway shall be sited consistent with the requirements of Sections 704 and 705 respectively. All dwellings shall be sited so that a primary fuel break can be completed around the dwelling outside of the river or stream corridor setback/buffer area. The area within the river or stream setback/buffer area shall be exempt from the secondary fuel break requirements.~~

~~d. The area of an existing state, county, public or private road right-of-way adjacent to the subject property may be utilized to satisfy the fuel break requirements, providing all dwellings and structures are sited a minimum of 30 feet from the front, rear and side property lines.~~

~~e. A variance to the 30 foot front, side or rear setbacks may be allowed subject to Section 1205.~~

~~f. The fuel break standards shall be completed and approved by the Planning Division staff prior to issuance of any septic, building or manufactured dwelling permits. Maintenance of the fuel breaks shall be the continuing responsibility of the property owner.~~

~~C. Compatibility Siting Standards: Siting of development shall comply with the provisions of Section 1002 and 1003. Conditional use and temporary structures shall be sited to minimize impact on sensitive wildlife areas identified on Comprehensive Plan Table III-1, *Compatibility Criteria for Wildlife Sensitive Areas*, and Comprehensive Plan Map III-4, *Stevens Great Blue Heron Rookery*, as follows:~~

~~1. When structures exist on adjacent properties, siting of new structures shall comply with the following prioritized techniques:~~

~~a. Locate new structure(s) adjacent to an existing compatible structure(s) sharing a common road. (A compatible structure, for purposes of this provision, shall be any structure which does not adversely affect the intended use of another structure.); or~~

~~b. Where "a" above is not practical, locate adjacent to an existing~~

~~structure and minimize the length of access from the nearest existing public road; or~~

~~c. Where "a" or "b" above are not practical, site to achieve maximum distance between structures, and minimize the length of access from the nearest existing public road.~~

~~2. Where no compatible structures exist on adjacent properties, new structures shall be sited to allow future development to satisfy Subsection 406.09(C)(1)(a).~~

~~D. Public and private access:~~

~~1. All public roads, bridges or entrances from public roads shall be subject to the Clackamas County Roadway standards.~~

~~2. All private roads, bridges and driveways shall be subject to the local Fire District Fire Apparatus Access Road standards and County Excavation and Grading ordinance.~~

~~E. The applicant shall provide evidence to the Planning Division that the domestic water supply is from a source authorized in accordance with the Water Resources Department's (WRD) rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules.~~

~~1. For purposes of this subsection, evidence of a domestic water supply means:~~

~~a. Verification from a water purveyor that the use described in the application will be served by the purveyor; or~~

~~b. A water use permit issued by the WRD for the use described in the application; or~~

~~c. Verification from the WRD that a water use permit is not required for the use described in the application.~~

~~2. If the proposed water supply is from a well and is exempt from permitting requirements, the applicant shall submit the well constructor's report to the county upon completion of the well.~~

[Amended by Ord. ZDO-224, 5/31/11]

407.08 LAND DIVISIONS

Subsection 406.09, which establishes land division standards in the Timber District, shall apply in the Ag/Forest District.

~~407.10 LAND DIVISIONS, DIMENSIONS AND ADJUSTMENTS~~

~~Land divisions proposed for principal primary uses may be permitted by the Planning Director, subject to review with notice pursuant to Subsection 1305.02. All land divisions under this subsection shall be subject to Oregon Revised Statutes Chapter 92. Land divisions shall be processed and reviewed consistent with the following criteria:~~

~~A. Land Divisions: The parcel size shall be no less than 80 acres.~~

~~B. Multiple Dwelling Land Divisions: A parcel or lot with at least two legally established dwellings may be partitioned subject to 407.05(A)(5) and the following provisions:~~

~~1. At least two lawfully created dwellings existed on the lot or parcel prior to November 4, 1993;~~

~~2. Each dwelling complies with the criteria for a replacement dwelling under Subsection 407.04(D);~~

~~3. Except for one lot or parcel, each lot or parcel created under this provision is not less than two nor greater than five acres in size;~~

~~4. At least one of the existing dwellings is located on each lot or parcel created under this provision;~~

~~5. The landowner of a lot or parcel created under this provision provides evidence that a restriction has been recorded in the Deed Records for Clackamas County that states the landowner and the landowner's successors in interest are prohibited from further dividing the lot or parcel. This restriction shall be irrevocable unless released by the Planning Director indicating the land is no longer subject to statewide planning goals for lands zoned for Forest use.~~

~~6. A lot or parcel may not be divided under this provision if an existing dwelling on the lot or parcel was approved through a land use regulation that prohibited or required removal of the dwelling or prohibited a subsequent land division of the lot or parcel.~~

~~7. Dwelling setbacks shall be 30 feet from front, rear and side property lines and are not required to satisfy the Fuel Break Standards outlined in Section 407.09(B)(5). A preexisting dwelling setback to the original property line shall not be subject to these setback standards.~~

~~C. Homestead Dwelling Land Division, subject to the following criteria:~~

~~1. The parcel shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the~~

~~parcel shall be no larger than 10 acres;~~

~~2. The dwelling existing prior to June 1, 1995;~~

~~3. The remaining parcel, not containing the dwelling, is at least 80 acres; or~~

~~4. The remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels total at least 80 acres;~~

~~5. The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal.~~

~~6. The applicant shall provide evidence that an irrevocable deed restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk. The restriction shall state that the parcel is not entitled to a dwelling unless subsequently authorized by law or goal and shall be irrevocable unless a statement of release is signed by the county Planning Director that the law or goal has changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural or forest land.~~

~~7. The landowner shall provide evidence that a deed restriction has been recorded with the county clerk, on the parcel containing the dwelling, stating that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.~~

~~D. Conditional Use Divisions: The lot size for all conditional uses identified pursuant to Subsection 407.06(B), (1) through (6), (9) through (15), (17), and (19) through (31) shall be determined by the Hearings Officer who shall consider the minimum land area required for the use and accessory elements for the use. The objective will be to minimize the impact on surrounding properties and limit the amount of land taken out of farm or forest use.~~

~~Land divisions created for conditional uses shall be described and recorded as approved by the county prior to any development occurring on the lots. New land divisions less than 80 acres in size may be approved only for the above described uses if those uses have been approved pursuant to Subsection 407.06(A).~~

~~E. Property line adjustments shall be subject to Section 1107.~~

~~F. Right-of-Way Inclusion: For purposes of satisfying the lot size requirements of this district, lots which front on existing county or public roads may include the land area between the front property line and the middle of the road right-of-way. Lots which front on state and federal highways may not include the land area between the front property line and the middle of the road right-of-way.~~

~~G. Structure Setback: Shall be 30 feet from the front and rear property lines and 10 feet from the side property line and are not required to satisfy the Fuel Break Standards outlined in Section 407.09 when the following occur:~~

~~1. Replacement dwellings within 100 feet of the existing dwelling; or~~

~~2. Additions to an existing dwelling or new dwellings approved under a previous land use application where the fire siting standards were not required as a condition of approval; or~~

~~3. Additions to accessory buildings or new accessory buildings.~~

~~4. Variances to these requirements may be allowed pursuant to Section 1205.~~

~~H. General Provisions and Exceptions: Except where specifically stated, the provisions of this section shall not preclude the application of the general provisions and exceptions under Section 900.~~

[Amended by Ord. ZDO-224, 5/31/11]

407.09~~11~~ SUBMITTAL REQUIREMENTS

Subsection 406.10, which establishes submittal requirements in the Timber District, shall apply in the Ag/Forest District.

~~A. An application for any use requiring review by the Planning Director under Subsection 1305.02 shall include the following:~~

~~1. A complete Land Use Application Form;~~

~~2. Accurate Site Plan drawn to scale on 8.5" x 11" or 8.5" x 14" paper, showing the property and proposal;~~

~~3. Application Fee;~~

~~4. Supplemental Application Form addressing each of the applicable approval criteria for the proposed use; and~~

~~5. Farm Dwellings requiring a justification of income shall include tax forms, farm receipts, or other appropriate documentation demonstrating the income produced from the subject property.~~

[Amended by Ord. ZDO-230, 9/26/11]

407.10~~2~~ APPROVAL PERIOD AND TIME EXTENSION

Subsection 406.11, which establishes approval period and time extension standards in the Timber District, shall apply in the Ag/Forest District.

~~A. Approval Period: Approval of an administrative action under Section 407 is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented. "Implemented" means:~~

~~1. For a land division, the final plat shall be recorded with the County Clerk. If a final plat is not required under Oregon Revised Statutes Chapter 92, deeds with the legal descriptions of the new parcels shall be recorded with the County Clerk; or~~

~~2. For all other administrative actions, a building or manufactured dwelling placement permit for a new primary structure that was the subject of the administrative action shall be obtained and maintained. If no building or manufactured dwelling placement permit is required, all other necessary County development permits shall be obtained and maintained.~~

~~B. Time Extension: If the approval of an administrative action is not implemented within the initial approval period established by Subsection 407.12(A), a two-year time extension may be approved by the Planning Director pursuant to Subsection 1305.02, and subject to Subsection 1305.05.~~

~~C. Subsections 407.12(A) and (B) do not apply to home occupations or conditional uses, which shall be subject to any applicable approval period and time extension provisions of Sections 822 or 1203.~~

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

834 COMPOSTING/YARD DEBRIS PROCESSING FACILITY

834.01 GENERAL PROVISIONS

This Section is adopted to implement the policies of the Solid Waste Section of the Public Facilities and Services element of the Comprehensive Plan. Composting/yard debris processing facilities shall be considered pursuant to the siting, design and operational provisions of this section. Additionally, these facilities shall be subject to:

A. All requirements of the Clackamas County Solid Waste and Waste Management Ordinance.

B. All requirements of the Clackamas County Excavating and Grading Ordinance.

C. All rules and regulations of the Oregon State Department of Environmental Quality for all types of composting facilities as codified in ORS 468B.050 and OAR 340, Divisions 93, 95, 96 and 97.

D. All composting rules of the Metropolitan Service District (as codified in Metro Code chapter 5.01) and compliance with Metro's Regional Solid Waste Management Plan (RSWMP) for facilities that are proposed to be sited within the Metro Boundary.

E. The adoption of these provisions is in addition to the remaining Sections of the Ordinance. In the event there are conflicts between these and other provisions of the Ordinance, the standards and procedures of this Section shall supersede other conflicting provisions affecting composting/yard debris processing facilities.

834.02 DEFINITIONS

A. Composting means the managed process of controlled biological decomposition of green feedstocks. It does not include composting for the purposes of soil remediation.

B. Composting facility means a site or facility excluding home composting areas as described in Section 202 and agricultural composting conducted as a farm use, which utilizes green feedstocks to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Vermiculture and vermicomposting are considered composting facilities. Composting facilities or sites may include sales of the finished product, as well as accessory products limited to topsoil, barkdust and aggregate commonly used in

landscaping to wholesale and retail customers. The area utilized for the sale of said accessory products shall not exceed 10% of the area used for composting, or two (2) acres, whichever is less subject to the provisions of Subsection 834.03 and 834.04.

C. Green feedstocks are defined as including yard debris, non-treated wood waste, vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products, crop waste and livestock manure. For the purpose of these provisions, "non-treated wood waste" excludes wood waste treated with paint, varnish or other chemicals or preservatives.

834.03 AREA OF APPLICATION

A. The following Table of Uses lists where composting/yard debris facilities may be permitted subject to review by the Hearings Officer pursuant to the Conditional Use provisions of Section 1203 ~~(CU)~~ in reference to specific zoning districts. Existing lawfully established composting facilities may be maintained, enhanced, or expanded subject to the provisions of this section. ~~In the case of facilities located in areas designated farm or forest on the comprehensive plan map, such facilities shall only be approved when the use can satisfy the following criteria:~~

~~1. The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or,~~

~~2. The proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest practices.~~

TABLE OF USES

STATUS OF USE	ZONING DISTRICT
CU	Timber District (TBR)
CU	AG/Forest District (AG/F)
CU*	Exclusive Farm Use District (EFU)
CU	Rural Residential/Farm Forest 5 Acre District (RRFF-5)
CU	Farm Forest 10 Acre District (FF-10)
CU	Light Industrial (I-2)
CU	General Industrial (I-3)
CU	Rural Industrial District (RI)

* Not p~~P~~ermitted on "h~~H~~igh v~~V~~alue f~~F~~armland as d~~D~~efined in ORS 215.710, except as provided in Subsection 401.05(H)(2).

B. Composting facilities are a prohibited use in all other Districts.

834.04 DEVELOPMENT STANDARDS

The development of composting facilities shall be subject to the requirements prescribed in Section 1000 pursuant to the Design Review procedures of Section 1102. Additionally, these facilities shall be subject to the following development and operational standards:

A. Lot Area, Setbacks:

REVIEW CRITERIA	ZONING DISTRICT	MINIMUM LOT SIZE	Setback Requirements	
			PROPERTY LINES	PERENNIAL DRAINAGEWAYS, WETLANDS & WELLS
Conditional Use	Timber District (TBR)	5 Acres	All structure setbacks shall meet the fire break standards described under subsection 406.09(C) (1/9/03)	A minimum of 100 feet
Conditional Use	AG/Forest District (AG/F)	5 Acres	All structure setbacks shall meet the fire break standards described under subsection 407.09(C) (1/9/03)	A minimum of 100 feet
Conditional Use	Exclusive Farm Use District (EFU)	5 Acres	The operational area shall be a minimum fifty (50) feet from all property lines.	A minimum of 100 feet
Conditional Use	Farm Forest 10 Acre District (FF-10)	5 Acres	The operational area shall be a minimum fifty (50) feet from all property lines.	A minimum of 100 feet
Conditional Use	Rural Residential Farm Forest 5 Acre District (RRFF-5)	5 Acres	The operational area shall be a minimum fifty (50) feet from all property lines.	A minimum of 100 feet
Conditional Use	Light Industrial (I-2)	5 Acres	The operational area shall be a minimum fifty (50) feet from all property lines.	A minimum of 100 feet
Conditional Use	General Industrial (I-3)	5 Acres	The operational area shall be a minimum fifty (50) feet from all property lines.	A minimum of 100 feet
Conditional Use	Rural Industrial (RI)	5 Acres	The operational area shall be a minimum fifty (50) feet from all property lines.	A minimum of 100 feet

B. Transportation:

The County shall require the necessary traffic measures to insure the facility use is consistent with the County transportation system.

1. Facilities shall have ingress and egress from a paved road. Additionally, access to the site shall be paved a minimum fifty (50) feet into the site from the property line.

2. The road access system to the facility shall be adequate to handle traffic generated by the use. The facility shall have an operational plan that assures those traveling to the facility, particularly trucks, travel primarily on truck routes identified by the County. Additionally, the driveway apron from the paved road to the property line shall be hard-surfaced.

3. All weather roads shall be provided from the public highway or roads to and within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards, dust, and noise pollution.

4. The operator shall install and maintain signage so that routes to the facility are posted. Signage shall be subject to the applicable County and state regulations.

5. Effective barriers to unauthorized entry and dumping shall be provided (such as fences, gates and locks).

C. Site design, landscaping, and lighting:

1. The storage of composting materials, end products, and equipment shall occur only in the designated operation area.

2. The operational area shall be screened and buffered with vegetation. Any screening, buffering or vegetation at the intersection of any road, driveway or easement shall comply with the site distance requirements of the American Association of State Highway and Transportation Officials (AASHTO) manual.

3. On-site lighting shall be designed, located, shielded, or deflected so as not to shine off-site onto structures or impair the vision of the driver of any vehicle.

4. The property shall be located within a fire protection district capable of fire suppression as demonstrated by a written letter from the applicable district.

5. Noise generated from the operation of the composting facility shall not unreasonably interfere with the use and enjoyment of surrounding properties for their primary use. Various methods of sound control may be required such as installation of earth berms, strategic location of stockpiles and limiting hours of operation as required by the Hearings Officer.

6. The maximum height of storage materials shall not be more than-twenty five (25) feet, or the height of the vegetation screening, whichever is less.

7. The feedstock shall be ground within one (1) week of receipt.

8. The tipping, grinding and storage areas of unprocessed yard debris shall be managed to control odors.

9. The facility owner or operator shall on a daily basis collect litter and illegally dumped waste on all public roads leading to the facility for a distance up to one-quarter (¼) mile of the facility entrance.

10. Feedstocks shall be incorporated into active compost piles within a reasonable time. Grass clippings shall be incorporated within twenty four (24) hours of receipt.

11. Storage

    a. All feedstocks deposited at the site shall be confined to the designated dumping area.

    b. Facilities and procedures shall be provided for handling, recycling or disposing of feedstocks that are non-biodegradable by composting.

834.05 SUBMITTAL REQUIREMENTS

A. A detailed traffic study, including onsite circulation, shall be required as a means for the County to assess appropriate traffic impact measures. The study shall be based on Metro's traffic data methodology and meet the requirements of the County's comprehensive transportation planning model. Such a study must be performed by an engineer registered in the state of Oregon.

B. The applicant shall submit a transportation plan that assures those traveling to the facility, particularly trucks, travel primarily on truck routes identified

by the County. If no truck routes are readily available, the routes selected and used shall not significantly impact the existing traffic patterns.

C. An application shall be required and shall include but not be limited to:

1. Location and design of the physical features of the site and composting plant, surface drainage control, wastewater facilities, fences, residue disposal, controls to prevent adverse health and environmental impacts, and design and performance specifications for major composting equipment and detailed descriptions of methods to be used.

2. A proposed plan for utilization of the processed compost or other evidence of assured utilization of composted feedstocks.

3. A proposed plan to dispose of processed compost that, due to concentration of contaminants, cannot be marketed or used for beneficial purposes, and finished compost which has been stored for two years since processing was completed.

4. A dust control plan shall be submitted to the County and, when required, DEQ for approval. A copy of the approved plan shall be submitted to the County prior to operation of the facility.

834.06 ISSUANCE OF PERMITS

Prior to commencing any activities authorized by the Hearings Officer pursuant to these provisions, the applicant shall submit copies of all operating permits or licenses required by DEQ or Metro as applicable.

902 LOT SIZE EXCEPTIONS

902.01 MINIMUM LOT SIZE EXCEPTIONS

A. Minimum lot size exceptions do not apply within the Portland Metropolitan Urban Growth Boundary in the following zones: RA-1, RA-2, RRFF-5, FF-10, RC, and RI.

B. The subdividing and partitioning of land shall comply with the minimum lot size provisions of the underlying zoning district, except under the following circumstances:

1. Bonus Density: A smaller lot size is necessary to provide bonus density dwelling units awarded under Section 1012.

2. Planned Unit Developments and Flexible-Lot-Size Developments: The smaller lots are within a planned unit development as provided under Section 1013, or a flexible-lot-size development as provided under Subsection 1014.04(B).

3. Two or More Lawfully Established Dwellings on One Lot of Record: The smaller lot size is necessary to allow separate ownership of each of two or more lawfully established dwellings located on one lot of record with a Comprehensive Plan designation of Low Density Residential or Rural. The number of separate lots created under this provision shall not exceed the number of lawfully established dwellings located on the lot prior to the division. This provision shall not apply to the creation of separate lots for accessory dwellings established on a lot with a Comprehensive Plan designation of Agriculture, Forest, or Rural, or for accessory dwelling units or guest houses, or for manufactured dwellings and residential trailers established under a temporary permit or within a manufactured dwelling park.

4. Conditional Use: The smaller lot size is for a conditional use, and the proposed lot satisfies the lot size and other special use requirements for the use, as specified in this Ordinance.

5. Comprehensive Plan Boundary~~Urban/Rural/Agriculture/Forest Split~~: When through a legislative zone change, a lot of record~~, parcel, or tract of land~~ is divided by ~~Urban, Rural, Agriculture, or Forest~~ a Comprehensive Plan (Plan) boundary~~boundaries~~, the lot of record~~, parcel, or tract of land~~ may be divided along the Plan boundary ~~line~~ (access strips and parcels of less than one~~1~~ acre are excluded), provided:~~subject to the subdivision or partition requirements of this Ordinance. Development on the resulting lots, parcels, or tracts of land shall be subject to the provisions of the~~

~~underlying zoning district.~~

a. The Plan boundary divides an Urban Plan designation from a Rural, Agriculture, or Forest Plan designation, or the Plan boundary divides a Rural Plan designation from an Agriculture or Forest Plan designation; and

b. A lot of record, created pursuant to Subsection 902.01(B)(5), with an Agriculture or Forest Plan designation shall not be less than 80 acres.

902.02 MINIMUM LOT SIZE

No dwelling shall be built on a lot of record containing less than 3,000 square feet in area unless otherwise permitted in the underlying zoning district.

1204 TEMPORARY PERMITS

1204.01 TEMPORARY USE OTHERWISE PROHIBITED

A. The Planning Director may approve a temporary permit, pursuant to Subsection 1305.02, for a period not to exceed one year, when the applicant provides evidence substantiating the following:

1. The use for which a temporary permit is requested is not listed as a permitted, accessory, limited, or conditional use in the underlying zoning district; and

2. There is no reasonable alternative to the temporary use; and

3. The permit will be necessary for a limited time; and

4. The temporary use will not include the construction of a substantial structure or require a permanent commitment of the land; and

5. The temporary use will not have a materially adverse effect on the surrounding area.

B. A permit shall not be approved pursuant to this Subsection in an Exclusive Farm Use, Timber or Ag/Forest zoning district except as provided in Subsections 406.04 and 406.05~~406.07(A) and (B) and 407.07(A) and (B)~~.

C. A permit approved pursuant to Subsection 1204.01 may be renewed, subject to Subsection 1305.02, for a period not to exceed one year. A renewal shall be subject to the same approval criteria as an initial permit. A temporary permit for a use otherwise prohibited may be renewed an unlimited number of times.

[Amended by Ord. ZDO-224, 5/31/11]

1204.02 TEMPORARY DWELLING WHILE BUILDING

A. The Planning Staff may approve a temporary permit in any zoning district, pursuant to Subsection 104.01(A), for a period not to exceed two years for the use of a manufactured dwelling, residential trailer, or recreational vehicle for residential purposes while a permanent dwelling is being constructed, when the applicant provides evidence substantiating the following:

1. A building permit to construct a permanent dwelling has been issued for the lot, parcel, or tract on which the temporary dwelling will be located; and

2. The temporary dwelling will be occupied by the owner of the subject lot, parcel, or tract.

B. If a valid building permit for a permanent dwelling on the subject lot, parcel, or tract is not maintained, the temporary permit shall become void on the day the building permit lapses.

C. A permit approved pursuant to Subsection 1204.02 shall be subject to the following conditions of approval:

1. The temporary dwelling shall be connected to a sanitary sewer system or to an on-site sewage disposal system approved by the Soils Section of the County Department of Water Environment Services.

2. The temporary dwelling shall comply with the primary structure setback standards of the underlying zoning district.

3. A manufactured dwelling or residential trailer approved pursuant to Subsection 1204.02 shall be removed from the subject lot, parcel, or tract when the permit expires or the permanent dwelling is occupied, whichever first occurs. A recreational vehicle approved pursuant to Subsection 1204.02 shall be removed from the subject lot, parcel, or tract or placed in a stored condition when the permit expires or the permanent dwelling is occupied, whichever first occurs. For the purpose of this provision, a recreational vehicle shall be deemed to be placed in a stored condition when it ceases to be used for residential purposes and is disconnected from any on-site sewage disposal system and all utilities other than temporary electrical connections for heating necessary to avoid physical deterioration. Storage of a recreational vehicle shall comply with all other applicable requirements of this Ordinance.

4. Other conditions may be applied as authorized by Subsection 1201.03.

D. A permit approved pursuant to Subsection 1204.02 may not be renewed. For the purpose of this provision, a renewal shall be the same or any substantially similar application filed within two years of the date a previous permit approved pursuant to Subsection 1204.02 expired.

E. If the proposed temporary dwelling is a manufactured dwelling that complies with all requirements for a permanent dwelling in the underlying zoning district, a temporary permit shall not be required. Instead the manufactured dwelling may be approved as a permanent dwelling to be replaced by the new permanent dwelling upon completion of construction.

[Amended by Ord. ZDO-224, 5/31/11]

1204.03 TEMPORARY DWELLING FOR CARE

A. The Planning Director may approve a temporary permit, pursuant to Subsection 1305.02, for a period not to exceed two years in an Exclusive Farm Use, Timber, or Ag/Forest zoning district or three years in any other

zoning district, for the use of a manufactured dwelling, residential trailer or recreational vehicle for residential purposes, when the applicant provides evidence substantiating the following:

1. The temporary dwelling will be occupied by a person or persons who require(s) care or who will provide care. This provision shall not prevent persons in addition to the care recipient(s) or the care provider(s) from occupying the temporary dwelling provided such occupancy is consistent with the remaining provisions of Subsection 1204.03; and

2. The temporary dwelling will be located on the same lot, parcel, or tract as a legally established permanent dwelling. The permanent dwelling will be occupied by the person(s) receiving care from the occupant(s) of the temporary dwelling or by the person(s) providing care to the occupant(s) of the temporary dwelling. This provision shall not prevent persons in addition to the care recipient(s) or the care provider(s) from occupying the permanent dwelling provided such occupancy is consistent with the remaining provisions of Subsection 1204.03; and

3. There exists a need for care. The need shall be documented by a signed statement from a licensed healthcare provider. The statement shall be dated within 90 days preceding the date the application is submitted and shall identify the care recipient, generally indicate that an age-related and/or medical condition results in a need for care, and substantiate that the type of assistance required by the patient is consistent with the type of assistance identified in the definition of "care" in Subsection 1204.03(B); and

4. There exists no reasonable housing alternative in the form of adequate housing on the subject lot, parcel, or tract. A determination regarding the reasonableness of the care recipient and the care provider occupying the permanent dwelling together shall be made based on the size and floor plan of the permanent dwelling with consideration for maintaining a degree of privacy and independence for both the care recipient and the care provider; and

5. There exists no reasonable alternative care provider. Alternative care providers that shall be considered include:

   a. Other adults who live with the care recipient; and

   b. Other relatives of the care recipient who live nearby. This alternative shall only be considered in cases where the care recipient currently resides on the subject lot, parcel, or tract; and

6. There is no other temporary dwelling for care on the subject lot, parcel, or tract.

B. As used in Subsection 1204.03, "care" means assistance, required as a result of age and/or poor health, that is given to a specific person in the activities of daily living, which may include, but are not necessarily limited to, bathing, grooming, eating, medication management, ambulation, and transportation, and/or "care" means daily supervision of a specific person when such supervision is required due to cognitive impairment. As used in Subsection 1204.03, "care" does not include assistance with improvement or maintenance of property in the absence of a documented need for assistance with personal activities or a need for personal supervision due to cognitive impairment. "Care" does not include financial hardship alone.

C. A permit approved pursuant to Subsection 1204.03 shall be subject to the following conditions of approval:

1. Sewage discposal: The temporary dwelling shall be connected to a sanitary sewer system or to an on-site sewage disposal system approved by the Soils Section of the County Department of Water Environment Services. The temporary dwelling shall use the same on-site sewage disposal system used by the permanent dwelling if that disposal system is adequate to accommodate the additional dwelling as determined by the Soils Section of the County Department of Water Environment Services. An exception may also be granted if more than one legally established on-site sewage disposal system exists on the subject lot, parcel, or tract.

2. Setbacks: The temporary dwelling shall comply with the primary structure setback standards of the underlying zoning district.

3. Utilities/services: All water, electricity, natural gas, and sanitary sewer service for the temporary dwelling shall be extended from the permanent dwelling services. No separate meters for the temporary dwelling shall be allowed. An exception may be granted if the utility provider substantiates that separate service is required or if more than one legally established service exists on the subject lot, parcel, or tract.

4. Driveway entrance: The temporary dwelling shall use the same driveway entrance as the permanent dwelling, although the driveway may be extended. An exception may be granted if more than one legally established driveway entrance to the subject lot, parcel, or tract exists.

5. Separation distance: The temporary dwelling shall be located within 100 feet of the permanent dwelling. This distance shall be measured from the closest portion of each structure. This distance may be increased if the applicant provides evidence substantiating that steep slopes, significant natural features, significant existing landscaping, existing structures, other physical improvements, or other similar constraints prevent compliance with the separation distance standard. The increase shall be the minimum necessary to avoid the constraint. An exception may also be granted if the

temporary dwelling will be sited in the same or substantially similar location as a previous, legally established temporary dwelling for care.

6. Deed statement: A written statement shall be recorded in the County deed records recognizing that a dwelling approved pursuant to Subsection 1204.03 is temporary and that the temporary permit is not transferable when the property is conveyed to another party.

7. Rental income: The temporary dwelling shall not be a source of rental income.

8. Removal/storage: A manufactured dwelling or residential trailer approved pursuant to Subsection 1204.03 shall be removed from the subject lot, parcel, or tract when the permit expires or the need for care ceases, whichever first occurs. An exception to this provision may be granted if a temporary manufactured dwelling is converted to a permanent dwelling. Such a conversion shall only be allowed if the temporary dwelling complies with all applicable requirements for a permanent dwelling, and if the conversion will not result in the subject lot, parcel, or tract's violating the density standards of the underlying zoning district. A recreational vehicle approved pursuant to Subsection 1204.03 shall be removed from the subject lot, parcel, or tract or placed in a stored condition when the permit expires or the need for care ceases, whichever first occurs. For the purpose of this provision, a recreational vehicle shall be deemed to be placed in a stored condition when it ceases to be used for residential purposes and is disconnected from any on-site sewage disposal system and all utilities other than temporary electrical connections for heating necessary to avoid physical deterioration. Storage of a recreational vehicle shall comply with all other applicable requirements of this Ordinance.

9. Other: Other conditions may be applied as authorized by Subsection 1201.03.

D. A permit approved pursuant to Subsection 1204.03 may be renewed, subject to the provisions of Subsection 1305.02, for a period not to exceed two years in an EFU, TBR, or AG/F zoning district or three years in any other zoning district when the applicant provides evidence substantiating the following:

1. The circumstances that provided the basis on which the previous permit was granted remain substantially similar. A renewal application shall be accompanied by a signed statement from a licensed healthcare provider. The statement shall be dated within 90 days preceding the date the application is submitted and shall identify the care recipient and substantiate that the level of assistance required is substantially similar to, or greater than, the level required when the previous permit was granted.

E. An application shall be evaluated under the approval criterion for a renewal application rather than the criteria for a new application if the permit is requested for the same lot, parcel, or tract and the same care recipient as the previous permit. A temporary permit for care may be renewed an unlimited number of times subject to Subsection 1204.03(D). However, an application received after the expiration of the previous permit shall be charged the same fee as a new application.

[Amended by Ord. ZDO-224, 5/31/11]

1204.04 TEMPORARY STRUCTURE FOR EMERGENCY SHELTER

A. The Planning Director may approve a temporary permit for emergency shelter in any zoning district, pursuant to Subsection 104.01(A), for the use of a manufactured dwelling, residential trailer, or recreational vehicle for residential purposes, or a commercial office trailer for business purposes, when the applicant provides evidence substantiating that a lawfully established dwelling or business located on the subject lot, parcel, or tract has been destroyed, substantially damaged, or rendered unsafe to occupy due to fire or natural disaster.

B. A permit approved pursuant to Subsection 1204.04 shall be initially approved for 60 days. If replacement or repair of the dwelling or business is lawfully commenced within 60 days of the date the permit is initially approved, the approval shall automatically be extended for two years from the date of initial approval. For the purpose of this provision, "lawfully commenced" shall mean the filing of a complete application for a land use, building, septic, grading, manufactured home placement and installation, plumbing, electrical, or other development permit required by the County or other appropriate permitting agency that is necessary to begin replacement or repair of the destroyed or damaged structure. If replacement or repair is not lawfully commenced within 60 days of the date the temporary permit is initially approved, the temporary permit shall become void on the sixty-first day.

C. A permit approved pursuant to Subsection 1204.04 shall be subject to the following conditions of approval:

1. The temporary dwelling or commercial structure shall be connected to a sanitary sewer system or to an on-site sewage disposal system approved by the Soils Section of the County Department of Water Environment Services.

2. The temporary dwelling or commercial structure shall comply with the primary structure setback standards of the underlying zoning district.

3. A manufactured dwelling, residential trailer, or commercial office trailer approved pursuant to Subsection 1204.04 shall be removed from the subject lot, parcel, or tract when the permit expires or the permanent

structure is occupied, whichever first occurs. A recreational vehicle approved pursuant to Subsection 1204.04 shall be removed from the subject lot, parcel, or tract or placed in a stored condition when the permit expires or the permanent structure is occupied, whichever first occurs. For the purpose of this provision, a recreational vehicle shall be deemed to be placed in a stored condition when it ceases to be used for residential purposes and is disconnected from any on-site sewage disposal system and all utilities other than temporary electrical connections for heating necessary to avoid physical deterioration. Storage of a recreational vehicle shall comply with all other applicable requirements of this Ordinance.

4. Other conditions may be applied as authorized by Subsection 1201.03.

D. A permit approved pursuant to Subsection 1204.04 may not be renewed. For the purpose of this provision, a renewal shall be the same or any substantially similar application filed within two years of the date a previous permit approved pursuant to Subsection 1204.04 expired.

[Amended by Ord. ZDO-224, 5/31/11]

1204.05 TEMPORARY FARMERS' MARKET

A. The Planning Director may approve a temporary permit for a Farmers' Market, pursuant to Subsection 1305.02, for a period not to exceed one year, when the applicant provides evidence substantiating the following:

1. The farmers' market will be located:

a. On a site in a Neighborhood Commercial, Community Commercial, General Commercial, Rural Tourist Commercial, Rural Commercial, Office Commercial, Retail Commercial, Office Apartment, Village Community Service, Village Office, Village Commercial, Regional Center Office, Regional Center Commercial, Planned Mixed Use, Corridor Commercial, Station Community Mixed Use, Campus Industrial, Light Industrial, General Industrial, Rural Industrial, or Business Park zoning district; or

b. At an institutional use in any zoning district, provided that the institutional use has different days and times of operation than the proposed market.

2. A permit approved pursuant to Subsection 1204.05 shall be subject to the following conditions:

a. Parking: If the market is proposed under Subsection 1204.05(A)(1)(a) to operate when regular business operations are being conducted, the applicant must demonstrate that adequate parking is provided pursuant to Section 1015.

i. Fifty percent of the total area occupied by market stalls shall be calculated as developed area for the purpose of determining minimum required parking spaces.

ii. Parking spaces occupied by market stalls shall not be counted as available spaces during market operation.

b. Hours of Operation:

i. The market may be conducted on a maximum of two days each week.

ii. If the market is to be located in an Urban Low Density Residential, Medium Density Residential, High Density Residential, Special High Density Residential, Recreational Residential, Mountain Recreational Resort, Rural Area Residential 1-Acre, Rural Area Residential 2-Acre, Rural Residential Farm Forest 5-Acre, Farm Forest 10-Acre, Planned Medium Density Residential, Hoodland Residential, Medium High Density Residential, Future Urban 10-Acre, Village Standard Lot Residential, Village Small Lot Residential, Village Townhouse, Village Apartment, or Regional Center High Density Residential zoning district, the market may only be operated (including setup and dismantling) between the hours of 8 a.m. and 8 p.m.

c. Signage:

i. The market may display 20 square feet of signage on each street frontage of the site on which the market is held.

ii. Each farmers' market stall may display 10 square feet of signage at the stall.

iii. Signage shall be subject to Subsection 1010.13(A)(5).

iv. Signage may be displayed only during the hours of market operation.

[Added by Ord. ZDO-224, 5/31/11]

3

CLACKAMAS
COUNTY

OFFICE OF COUNTY COUNSEL
PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

David W. Anderson
Kimberley Ybarra
Kathleen Rastetter
Scot A. Sideras
Chris Storey
Scott C. Ciecko
Alexander Gordon
Rhett C. Tatum
Assistants

June 7, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order Amending the Clackamas County
Local Contract Review Board Rules

The 2011 legislature made certain changes to public contracting law in Oregon. The Attorney General's office, in compliance with ORS 279A.065(3), published updated Model Rules for public contracting that adapt the existing rules to the 2011 statutes, and make other changes designed to improve the rules.

Clackamas County is charged by statute, ORS 279A.065(5)(b), to review its own Local Contract Review Board Rules (LCRB Rules) each time the Attorney General updates the Model Rules. Staff has completed this review and recommends that the County adopt the attached changes to the existing Clackamas County LCRB Rules (which are codified in the County Code as "Appendix C").

The Board acts as the Local Contract Review Board for the County. The Board adopts changes to the LCRB Rules by adoption of a Board Order at its regular business meeting, upon a single reading, as provided in County Code section 2.04.020. Proposed additions are shown in the attached text underlined, and proposed deletions are show ~~struck through~~. The Board reviewed these amendments at its work session on March 13, 2012.

Summary of changes:

C-046-0300 Preferences for Oregon Goods and Services: adds discretionary preferences for goods fabricated or processed entirely in Oregon, or services performed entirely in Oregon.

C-047-0257 Multi-Step Sealed Bidding: Revised to give process flexibility and remove some mandatory steps.

C-047-0260 Competitive Sealed Proposals: Clarification concerning requirements for what must be included in a solicitation document.

C-047-0261 Multi-Tiered and Multi-Step Proposals: Clarification of rules related to proposal process. Combines rules.

C-047-0800 Contract Amendments. Rewritten to clarify the rule and to follow Model Rule changes. Included are the following:

> C-047-0800(1)(b) Unanticipated Amendments. Changes amount of amendment to contract allowed without additional competitive process to the greater of 25% of the

original contract or $150,000, but only where other conditions regarding original process and scope of amendment are met. This amount matches Model Rule 137-047-0270.

C-047-0800(1)(f) Renegotiation: Clarification concerning extension of the term to be no longer than allowed in the solicitation documents, contract, or notice of sole source or special procurement.

C-047-0800(1)(g) Amendments to Price Agreements. Clarifies rule for amendments to price agreements.

C-047-0800(3) Intermediate Procurements: Follows the Model Rule concerning amendment to Intermediate Procurement up to $150,000 or 25% of the original contract price, whichever is greater. (Based on Model Rule 137-047-0270).

C-050-0100 Delegation of Authority to Sign Contracts: updates job titles and adds Technology Services Deputy Director to the list.

RECOMMENDATION

Conduct a single reading and adopt the attached Board order amending the Clackamas County Local Contract Review Board Rules.

Sincerely,

David W. Anderson

David W. Anderson
Legal Counsel, Senior

For more information on this item please contact David W. Anderson at 503/655-8362 DavidAnd@clackamas.us
or Lane Miller, Purchasing Manager, at 503/742-5442 LaneM@clackamas.us

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Amending Local Contract Review Board Rules, Appendix C of the Clackamas County Code	}	**Order No.** Page 1 of 1

This matter coming on at this time to be heard, and it appearing to the Board of County Commissioners that:

WHEREAS, the Board of County Commissioners adopted Local Contract Review Board Rules on February 24, 2005 (Board Order No. 2005-34) and amended those rules on August 24, 2006 (BCC Order No. 2006-366); January 31, 2008 (BCC Order 2008-08); October 16, 2008 (BCC Order 2008-165); July 7, 2009 (BCC Order 2009-84); and March 18, 2010 (BCC Order 2010-21); and

WHEREAS, those Local Contract Review Board Rules ("LCRB Rules") are incorporated into the Clackamas County Code as Appendix C, and

WHEREAS, it is now in the public interest to further amend those rules;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Section 1: The Clackamas County Local Contract Review Board Rules, Appendix C to the County Code, are hereby amended as shown in the attached Exhibit A (additions to the text are underlined; deletions are ~~struck through~~).

Section 2: ORS 279A.065(5)(b) requires a contracting agency that adopts its own public contracting rules to review the rules each time the Attorney General modifies the model rules to determine whether the rules should be modified to ensure compliance with statutory changes. The LCRB Rules have been reviewed by County staff in accordance with this law, and modified to ensure compliance with statutory changes. These LCRB Rules, and not the Attorney General's Model Rules, apply to the County and the other Contracting Agencies described in Rule C-046-0100.

DATED this 7th day of June, 2012.

BOARD OF COUNTY COMMISSIONERS

_____
Chair

_____
Recording Secretary

CLACKAMAS COUNTY
LOCAL CONTRACT REVIEW BOARD RULES[1]

TABLE OF CONTENTS

DIVISION C-046 6

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING 6

C-046-0100 Application; Federal Law Supremacy 6

C-046-0110 Definitions for the Rules 6

C-046-0120 Policy 9

C-046-0130 Application of the Code and Model Rules; Exceptions 10

C-046-0140 Delegation of Authority 10

CONTRACT PREFERENCES 11

C-046-0300 Preferences for Oregon Goods and Services; Nonresident Bidders 11

C-046-0310 Reciprocal Preferences 12

C-046-0320 Preference for Recycled Materials 13

COOPERATIVE PROCUREMENT 13

C-046-0400 Authority for Cooperative Procurements 13

C-046-0420 Joint Cooperative Procurements 14

C-046-0430 Permissive Cooperative Procurements 14

C-046-0440 Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement 14

C-046-0450 Interstate Cooperative Procurements 15

C-046-0460 Advertisements of Interstate Cooperative Procurements 15

C-046-0470 Protests and Disputes 16

C-046-0480 Contract Amendments 16

PERSONAL SERVICE CONTRACTS 17

C-046-0500 Personal Service Contract Defined 17

DISPOSITION OF PERSONAL PROPERTY 18

C-046-0610 Auction Sales of Personal Property 19

C-046-0620 Sales of Personal Property 19

C-046-0630 Liquidation Sales of Personal Property 19

[1] Adopted by Order No. 2005-34, enacted February 24, 2005; Amended by: Order No. 2006-366, August 24, 2006; Amended by Order No. 2008-08, enacted January 31, 2008; amended by Order No. 2010-21, enacted March 18, 2010.

C-046-0640 Donations of Personal Property 19

REPEALED RULES 20

C-046-0700 Repealed Rules 20

DIVISION C-047 20

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES 20

C-047-0000 Application 20

C-047-0100 Definitions 20

SOURCE SELECTION 20

C-047-0250 Methods of Source Selection; Feasibility Determinations; Cost Analysis 20

C-047-0255 Competitive Sealed Bidding 23

C-047-0257 Multistep Sealed Bids 24

C-047-0260 Competitive Sealed Proposals 27

C-047-0261 Procedures for Competitive Range; Multi-tiered and Multistep Proposals 30

C-047-0262 Competitive Range, Discussions and Negotiations 35

C-047-0263 Multistep Sealed Proposals 38

C-047-0265 Small Procurements 40

C-047-0270 Intermediate Procurements 40

C-047-0275 Sole-source Procurements 40

C-047-0280 Emergency Procurements 41

C-047-0285 Contract Specific Special Procurements 41

C-047-0286 Class Special Procurements; Definitions 42

C-047-0288 Class Special Procurements; by Rule 42

C-047-0289 Availability of Exemptions 45

C-047-0290 Cooperative Procurements 45

PROCUREMENT PROCESS 46

C-047-0300 Public Notice of Solicitation Documents 46

C-047-0310 Bids or Proposals are Offers 47

C-047-0320 Facsimile Bids and Proposals 47

C-047-0330 Electronic Procurement 48

BID AND PROPOSAL PREPARATION 50

C-047-0400 Offer Preparation 50

C-047-0410 Offer Submission 50

C-047-0420 Pre-Offer Conferences 51
C-047-0430 Addenda to Solicitation Document 51
C-047-0440 Pre-Closing Modification or Withdrawal of Offers 52
C-047-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers 53
C-047-0460 Late Offers, Late Withdrawals and Late Modifications 54
C-047-0470 Mistakes 54
C-047-0480 Time for Agency Acceptance 55
C-047-0490 Extension of Time for Acceptance of Offer 55
C-047-0495 Specifications; Brand Name Products 56
QUALIFICATIONS AND DUTIES 56
C-047-0500 Responsibility of Bidders and Proposers 56
C-047-0525 Qualified Products Lists 56
C-047-0550 Prequalification of Prospective Offerors 56
C-047-0551 Pre-Negotiation of Contract Terms and Conditions 57
C-047-0575 Debarment of Prospective Offerors 57
OFFER EVALUATION AND AWARD 57
C-047-0600 Offer Evaluation and Award 57
C-047-0610 Notice of Intent to Award 59
C-047-0620 Documentation of Award 60
C-047-0630 Availability of Award Decisions 60
C-047-0640 Rejection of an Offer 61
C-047-0650 Rejection of All Offers 62
C-047-0660 Cancellation of Procurement or Solicitation 63
C-047-0670 Disposition of Offers if Procurement or Solicitation Canceled .. 63
LEGAL REMEDIES 64
C-047-0700 Protests and Judicial Review of Special Procurements 64
C-047-0710 Protests and Judicial Review of Sole-Source Procurements 65
C-047-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations 65
C-047-0730 Protests and Judicial Review of Solicitations 66
C-047-0740 Protests and Judicial Review of Contract Award 67
C-047-0745 Protests and Judicial Review of Qualified Products List Decisions 68
C-047-0750 Judicial Review of Other Violations 68

C-047-0760 Review of Prequalification and Debarment Decisions 68

C-047-0800 Contract Amendments 69

DIVISION C-049 73

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES 73

C-049-0100 Application 73

C-049-0110 Policies 73

C-049-0120 Definitions 73

C-049-0130 Competitive Bidding Requirement ..... 74~~73~~

C-049-0140 Contracts for Construction Other Than Public Improvements 74

C-049-0150 Emergency Contracts; Bidding and Bonding Exemptions 74

C-049-0160 Intermediate Procurements; Competitive Quotes and Amendments 75

FORMAL PROCUREMENT RULES; PUBLIC IMPROVEMENTS 76~~75~~

C-049-0200 Solicitation Documents; Required Provisions; Assignment or Transfer ..... 76~~75~~

C-049-0210 Notice and Advertising Requirements; Posting ..... 79~~78~~

C-049-0220 Prequalification of Offerors 80

C-049-0230 Eligibility to Bid or Propose; Registration or License ..... 81~~80~~

C-049-0240 Pre-Offer Conferences 81

C-049-0250 Addenda to Solicitation Documents ..... 82~~81~~

C-049-0260 Request for Clarificaton or Change; Solicitation Protests 82

C-049-0270 Cancellation of Solicitation Document 83

C-049-0280 Offer Submissions 84

C-049-0290 Bid or Proposal Security 85

C-049-0300 Facsimile Bids and Proposals 86

C-049-0310 Electronic Procurement 87

C-049-0320 Pre-Closing Modification or Withdrawal of Offers 87

C-049-0330 Receipt, Opening and Recording of Offers; Confidentiality of Offers 88

C-049-0340 Late Bids, Late Withdrawals and Late Modifications ..... 89~~88~~

C-049-0350 Mistakes ..... 89~~88~~

C-049-0360 First-Tier Subcontractors; Disclosure and Substitution 90

C-049-0370 Disqualification of Persons 91

C-049-0380 Bid or Proposal Evaluation Criteria 93

C-049-0390 Offer Evaluation and Award; Determination of Responsibility ..... 9~~493~~
C-049-0400 Documentation of Award; Availibility of Award Decisions 96
C-049-0410 Time for Contracting Agency Acceptance; Extension 97
C-049-0420 Negotiation With Bidders Prohibited 97
C-049-0430 Negotiation When Bids Exceed Cost Estimate 97
C-049-0440 Rejection of Offers 98
C-049-0450 Protest of Contractor Selection; Contract Award 100
C-049-0460 Performance and Payment Security; Waiver 102
C-049-0470 Substitute Contractor 102
C-049-0490 Foreign Contractor ..... 103~~102~~
C-049-0600 Alternative Contracting Methods 103
C-049-0610 Definitions for Alternative Contracting Methods 103
C-049-0620 Use of Alternative Contracting Methods 104
C-049-0645 Requests for Qualifications 104
C-049-0650 Requests for Proposals (RFP) ..... 105~~104~~
C-049-0655 Methods of Contractor Selection Authorized 108
C-049-0820 Retainage 108
C-049-0860 Public Works Contracts ..... 110~~109~~
C-049-0870 Specifications; Brand Name Products 110
C-049-0900 Contract Suspensions; Termination Procedures ..... 111~~110~~
C-049-0910 Contract Amendment on Public Improvements 111

DIVISION C-050 112~~111~~

AUTHORITY TO SIGN CONTRACTS 112

C-050-0100 Delegation of Authority to sign Contracts and Amendments . 112
C-050-0200 Avoidance of Delay Costs ..... 114~~113~~

CLACKAMAS COUNTY
LOCAL CONTRACT REVIEW BOARD RULES
DIVISION C-046

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

C-046-0100 Application; Federal Law Supremacy

(1) These Rules set forth the rules of procedure for Public Contracting of Clackamas County, Clackamas County Development Agency, Clackamas County Service District No. 1, Surface Water Management Agency of Clackamas County, Tri-City Service District, North Clackamas Parks and Recreation District, Clackamas County Extension & 4-H Service District, and Library Service District of Clackamas County (hereinafter "Contracting Agencies"). These Rules consist of the following four divisions:

(a) This division 46, which is applicable to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods or Services, as defined in ORS 279B.005;

(c) Division 49, which describes procedures for Public Contracting for Construction Services; and

(d) Division 50, which identifies the persons other than the Board who have authority to sign Contracts and Contract amendments for the Contracting Agency.

(2) In the event of conflict between rules in this division 46 and rules in divisions 47 and 49, the rules in divisions 47 and 49 take precedence over the rules in this division 46.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.

(4) These division 46 rules become effective on March 1, 2005 and apply to Public Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.030 & ORS 279A.065
[Adopted by Order No. 2005-34, enacted 2-24-05; Amended by Order No. 2009-84, enacted 7-7-09]

C-046-0110 Definitions for the Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Rules will have the meaning set forth in the division of the Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined there, the meaning set forth in the Code. The following terms, when capitalized in these Rules, shall have the meaning set forth below:

(1) "**Addendum**" or "**Addenda**" means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) "**Award**" means, as the context requires, either the act or occurrence of the Contracting Agency's identification of the Person with whom the Contracting Agency

will enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person, and the completion of all Contract negotiations.
(3) "**Bid**" means a response to an Invitation to Bid.
(3.1) "**Board**" means the Board of Commissioners of Clackamas County, or the Board of Directors of another of the Contracting Agencies, which is the Local Contract Review Board pursuant to ORS 279A.060.
(4) "**Closing**" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.
(5) "**Code**" means the Public Contracting Code, as defined in ORS 279A.010.
(6) "**Competitive Range**" means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with offer award and negotiation procedures. The size of the Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the Contracting Agency in accordance with offer award and evaluation procedures.
(7) "**Contract**" means a "Public Contract," as defined in ORS 279A.010.
(8) "**Contract Price**" means, as the context requires, (i) the maximum payments that a Contracting Agency will make under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed amount of payments specified in the Contract, or (iii) the unit prices for Goods or Services or Personal Services set forth in the Contract.
(9) "**Contract Review Authority**" means the Local Contract Review Board determined as set forth in ORS 279A.060, and where specified by statute, the Director of the Oregon Department of Transportation.
(9.1) "**Contracting Agency**" means Clackamas County, Clackamas County Development Agency, Clackamas County Service District No. 1, Surface Water Management Agency of Clackamas County, Tri-City Service District, North Clackamas Parks and Recreation District, Clackamas County Extension & 4-H Service District, or Library Service District of Clackamas County, as applicable.
(10) "**Contractor**" means the Person with whom a Contracting Agency enters into a Contract.
(10.1) "**Days**" means calendar days.
(11) "**DBE Disqualification**" means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.
(11.1) "**Department**" means Department of Administrative Services of the State of Oregon.
(12) "**Descriptive Literature**" means the Offeror's materials submitted to provide information concerning the products or services available in response to a Solicitation Document.
(12.1) "**Differing Site Conditions**" means subsurface or otherwise concealed physical conditions differing materially from those indicated in the contract, or unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract.
(13) "**Electronic Advertisement**" means notice of a Contracting Agency's request for Offers, request for quotes, request for information or other document inviting participation in the Contracting Agency's Procurements available over the Internet via (a) the World Wide Web or some other Internet protocol; or (b) a Contracting Agency's

Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
(14) "**Electronic Offer**" means a response to a Contracting Agency's request for Offers or request for quotes submitted to a Contracting Agency via email or through the Contracting Agency's Electronic Procurement System.
(15) "**Electronic Procurement System**" means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.
(15.1) **"Goods"** includes supplies, equipment, materials, personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified in this paragraph.
(16) "**Goods and Services**" or "Goods or Services" includes combinations of any of the items identified in the definitions of "goods" and "services."
(17) "**Invitation to Bid**" or "ITB" means the Solicitation Documents issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055, or 279C.335.
(18) "**Model Rules**" means the Attorney General's model rules of procedure for Public Contracting, which are set forth in OAR Chapter 137, divisions 46, 47, 48 and 49.
(19) "**Offer**" means a Written offer to provide Goods of Services in response to a Solicitation Document.
(20) "**Offeror**" means a Person who submits an Offer.
(21) "**Opening**" means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
(22) "**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.
(22.1) "**Personal Property**" means everything subject to ownership which is not real property, mobile homes, or tax foreclosed property and has exchangeable value.
(23) "**Personal Services**" means the services or type of services performed under a Personal Services Contract.
(24) "**Personal Services Contract**" or "Contract for Personal Services" means a contract or member of a class of contracts that has been designated in Rule C-046-0500 as a Personal Services Contract pursuant to ORS 279A.055.
(25) "**Product Sample**" means a representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.
(26) "**Proposal**" means a response to a Request for Proposals.
(26.1) "**Public Contracting Officer**" means the County Administrator, or those persons delegated such authority by written delegation approved by the Board.
(26.2) "**Public Improvement**" is defined by ORS 279A.010.
(26.3) "**Public Work**" is defined by ORS 279C.800.
(26.4) "**Purchasing Manager**" means the director of the Clackamas County Purchasing division or his designees, when the entity involved is Clackamas County or the Clackamas County Development Agency. When the entity involved is Clackamas County Service District No. 1, Surface Water Management Agency of Clackamas County, or Tri-City Service District, the Purchasing Manager shall be the Water

Environment Services Department Director or his designees. When the entity involved is North Clackamas Parks and Recreation District, the Purchasing Manager shall be the Director of that agency, or his designees.
(27) "**Responsible Offeror**" (also, "**Responsible Bidder**" or "**Responsible Proposer**," as applicable) means a Person that has submitted an Offer and meets the standards set forth in C-047-0640 or C-049-0390(2), and that has not been debarred or disqualified by the Contracting Agency under C-047-0575 or C-049-0370. When used alone, "Responsible" means meeting the aforementioned standards.
(28) "**Responsive Offer**" (also, "**Responsive Bid**" or "**Responsive Proposal**," as applicable) means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, "Responsive" means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
(29) "**Request for Proposals**" or "**RFP**" means all documents used for soliciting Proposals in accordance with either ORS.279B.060, 279C.110 or C-049-0650.
(29.1) "**Rule**" or "**Rules**" means these Clackamas County Local Contract Review Board rules.
(29.2) **"Services"** means services other than personal services designated under ORS 279A.055.
(30) "**Signed**" or "**Signature**" means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.
(31) "**Solicitation Document**" means an Invitation to Bid, Request for Proposals, Request for Quotes, or other similar document issued to invite offers from prospective contractors pursuant to ORS Chapter 279B or ORS Chapter 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.
(33) "**Work**" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.
(34) "**Written**" or "**Writing**" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-046-0120 Policy
Contracting Agencies subject to the Code shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.015 & ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0130 Application of the Code and Model Rules; Exceptions
(1) **Application**. Except as set forth in this section, a Contracting Agency shall exercise all procurement authority related to Public Contracting in accordance with the Code and the Rules.
(2) **Opt-out**. The Contracting Agencies hereby specifically opt out of the Attorney General's Model Public Contracting Rules and adopt their own Rules for Public Contracting pursuant to 279A.065 in the exercise of their own contracting authority. The Contracting Agencies are not subject to the Attorney General's Model Rules.
(3) **Personal Services Contracts**. Contracts for Personal Services designated as such by the Board pursuant to ORS 279A.055 and C-046-0500, are not required to be awarded under the procedures of ORS 279B.050 to 279B.085 and C-047-0250 through C-047-0290, unless the Contracting Agency expressly provides in the contracting documents that some portion of those statues or rules apply, or unless a state-funded contract for Architectural, Engineering, Land Surveying or Related Services is awarded under state law provisions pursuant to ORS 279C.110(2). Personal Service contracts will be awarded as set forth in C-046-0500.
(4) **Statutory Exceptions.** Neither the Code nor these Rules apply to the contracts or the classes of contracts described in ORS 279A.025(2).
(5) Neither the Code nor these Rules apply to the Public Contracting activities of the public bodies listed in ORS 279A.025(3).
(6) **Federal Programs.** Contracting Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program described in ORS 279A.180 without following the procedures set forth in ORS 279B.050 through ORS 279B.085, provided that the Contracting Agency enters into the Public Contract pursuant to rules adopted by the Public Contracting Agency pursuant to ORS 279A.180.
(7) **Disabled Opportunities**. Contracting Agencies otherwise subject to the Code and these Rules may enter into contracts for Goods or Services with non-profit agencies providing employment opportunities for individuals with disabilities pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200 through ORS 279A.225, or ORS 279B.050 through ORS 279B.085. However, Contracting Agencies must enter into such contracts in accordance with administrative rules promulgated by the Department.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.050, ORS 279A.055, 279A.065 & 279A.180
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-046-0140 Delegation of Authority

The Local Contract Review Board hereby delegates to the County Hearings Officer the rights, power, and authority vested in the Local Contract Review Board to receive notices, conduct hearings, and make decisions regarding prequalifications and disqualifications pursuant to ORS 279A.110, ORS 279B.425, ORS 279C.450, ORS 200.065(5) and ORS 200.075(1). In the event the County Hearings Officer is not available to conduct a timely hearing, the County Land Use Hearings Officer may serve in the same capacity and is hereby delegated the same rights, powers and authority.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.075
[Adopted by Order No. 2008-165, enacted 10/16/08]

CONTRACT PREFERENCES

C-046-0300 Preference for Oregon Goods and Services; Nonresident Bidders

(1) Tiebreaker Preference and**Award When Offers Are Identical**. Under ORS 279A.120, ~~W~~when a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Contracting Agency ~~shall~~ must award the Contract based on the following order of precedence:

(a) The Agency ~~shall~~ must award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services or Personal Services that ~~have been~~ are manufactured or produced in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that are manufactured or produced in Oregon, the Contracting Agency must Award the Contract by drawing lots among the identical Offers. The Contracting Agency must provide the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn

~~If two or more Offerors submit identical Offers, and both offer Goods or Services or Personal Services manufactured or produced in Oregon, the Contracting Agency shall award the Contract by drawing lots among the identical Offers offering Goods or Services or Personal Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.~~

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services or Personal Services that are manufactured or produced in Oregon, then the Contracting Agency ~~shall~~ must award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots ~~shall~~ must be given notice and an opportunity to be present when the lots are drawn.

(2) **Determining if Offers are Identical**. A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services or Personal Services described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Proposals received in response to a Special Procurement conducted ~~pursuant to~~under ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in writing, that two or more Proposals are equally advantageous to the Contracting Agency.

(3) **Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon**. In applying Section 1 of this rule, Contracting Agencies must determine whether a Contract is predominantly for Goods, Services or Personal Services

and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Contracting Agency determines is appropriate, any information the Contracting Agency may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods, Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Offeror.

~~For the purposes of complying with section 1 of this Rule, Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Contracting Agency, any information the Contracting Agency determines is appropriate and necessary to allow the Contracting Agency to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods or Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Bidder or Proposer.~~

(4) **Procedure for Drawing Lots.** In any instance when this Section calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) **Discretionary Preference and Award**. Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a ***specified*** percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, ~~&~~ 279A.120 & 279A.128.

[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. ___, enacted ___]

C-046-0310 Reciprocal Preferences

(1) When evaluating Bids pursuant to C-047-0255, C-047-0257 or C-049-0390, Contracting Agencies shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. A Contracting Agency may rely on the list prepared and

maintained by the Department pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state bidders, and (ii) the amount of such preference.

Stat. Auth.: ORS 279A.065
Stats. Implemented: *ORS 279A.065 & ORS 279A.120*
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0320 Preference for Recycled Materials

(1) Notwithstanding provisions of law requiring a Contracting Agency to award a Contract to the lowest responsible bidder or best proposer or provider of a quotation, and in accordance with subsection (2) of this section, a Contracting Agency charged with the procurement of goods for any public use shall give preference to the procurement of goods manufactured from recycled materials.

(2) In comparing goods from two or more Bidders or Proposers, if at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, a Contracting Agency shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following four conditions exists:

(a) The recycled product is available;

(b) The recycled product meets applicable standards;

(c) The recycled product can be substituted for a comparable non-recycled product; and

(d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent, or a higher percentage if a written determination is made by the Contracting Agency and set forth in the Solicitation Document. For purposes of making the foregoing determination, the Contracting Agency shall consider the costs of the goods following any adjustments the Contracting Agency makes to the price of the goods for purposes of evaluation pursuant to C-046-0310.

(3) For the purposes of this Section, a Contracting Agency shall determine if goods are manufactured from recycled materials in accordance with standards established by the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.125
[Adopted by Order NO. 2005-34, enacted 2-24-05]

COOPERATIVE PROCUREMENT

C-046-0400 Authority for Cooperative Procurements

(1) Agencies may participate in, sponsor, conduct or administer Cooperative Procurements as follows:

(a) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services or Personal Services, that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish Contracts for Public Improvements that use a competitive bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.

(b) Contracting Agencies may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish contracts or Price Agreements for

the acquisition of Goods or Services or Personal Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
(c) Contracting Agencies may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish contracts or Price Agreements for the acquisition of Goods or Services or Personal Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
(2) A solicitation and award process uses source selection methods substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 when it has the characteristics set forth in ORS 279A.200(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.205
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0420 Joint Cooperative Procurements
A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.210
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0430 Permissive Cooperative Procurements
A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.215
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0440 Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement
(1) A Purchasing Contracting Agency that wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement must publish notice of its intent to do so if the Purchasing Contracting Agency estimates that it will spend in excess of $250,000 on Goods and Services or Personal Services acquired under the Contract or Price Agreement.
(2) For purposes of determining whether a Purchasing Contracting Agency must give the notice required by C-046-0440(1), a Purchasing Contracting Agency will spend in excess of $250,000 for Goods and Services or Personal Services acquired under a Contract or Price Agreement arising out of a Permissive Cooperative Procurement if:
(a) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed $250,000, whether or not the total amount or value of the payments is expressly stated;
(b) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of $250,000; or

(c) At the time the Purchasing Contracting Agency enters into the Contract or Price Agreement, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services or Personal Services under the Contract or Price Agreement will, in aggregate, exceed $250,000 over the anticipated duration of the Contract or Price Agreement.

(3) The notice of intent required by C-046-0440(1) shall contain the information required by ORS 279A.215(2)(b), and Agency shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). The Purchasing Contracting Agency shall give the notice required by this Section no fewer than 7 days before the deadline for submitting comments regarding the Purchasing Contracting Agency's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(4) An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy all the notice requirements set forth in C-046-0440(1) and (3) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.

(5) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.215
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0450 Interstate Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.220
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0460 Advertisements of Interstate Cooperative Procurements

A Purchasing Contracting Agency may only participate in an Interstate Cooperative Procurement if at least one of the following occurs:

(1) The Solicitation Document for the Interstate Cooperative Procurement lists the Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member as a party that may enter into Contracts or Price Agreements under the terms and conditions of the Original Contract, and the Solicitation Document is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by either:

(a) The Purchasing Contracting Agency; or

(b) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(c) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the Purchasing Contracting Agency; or

(2) If the Solicitation Document issued by the Administering Contracting Agency was not advertised in accordance with C-046-0460(1), the Purchasing Contracting Agency gives notice of its intent to enter into a Public Contract or Price Agreement based on the terms of the Interstate Cooperative Procurement. The notice of intent shall contain the information required by ORS 279A.220 (2)(b)(B), and the Purchasing Contracting Agency shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). The Purchasing Contracting Agency shall give the notice required by this Section no fewer than 7 days before the deadline for submitting comments regarding the Purchasing Contracting Agency's intent to establish a contract or price agreement through a Permissive Cooperative Procurement.

(3) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a contract or price agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.220(3)(c).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.220
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0470 Protests and Disputes

(1) If a bidder or proposer wishes to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement, or the award or proposed award of an Original Contract, the bidder or proposer shall direct the protest to the Administering Contracting Agency, and the bidder or proposer shall make such protest in accordance with ORS 279B.400 through ORS 279B.425. If the Administering Contracting Agency is not subject to the Code, then bidders or proposers shall make such protests in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.

(3) Any other protests related to a Cooperative Procurement, or disputes related to a Contract or Price Agreement arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.225
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0480 Contract Amendments

A purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in C-047-0800.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

PERSONAL SERVICE CONTRACTS

C-046-0500 Personal Service Contract Defined.

(1) A contract for "Personal Services" is a contract that calls for specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with price being secondary. Personal Service Contracts include, but are not limited to:

(a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; financial advisor; investment banker; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; data processing consultant; software developer; golf course manager, operator or consultant; or broadcaster.

(b) Contracts for services as an artist in the performing of fine arts, including but not limited to persons identified as photographer, film maker, painter, weaver, or sculptor.

(c) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.

(d) Contracts for services as a consultant.

(e) Contracts for educational, training, or informational resource referral services.

(f) Contracts for human services in the areas of aging and senior services, mental health services, public health services, emergency medical services (including ambulance and paramedic services to be rendered to third parties), social services, child care services, and temporary shelter services.

(2) The following are not personal service contracts.

(a) Contracts, even though in a professional capacity, if substantially and predominately for a product, e.g. a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately for a tangible product.

(b) A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.

(c) Contracts for trade-related activities considered to be labor and materials contracts.

(d) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

(3) **Procedures Not Required.** Contracting Agencies are not required to award contracts for personal services under the procedures of ORS 279B.050 to 279B.085, or C-047-0250 to C-047-0290.

(4) **Procedure for Selection.**

(a) If the Contracting Agency determines that a Personal Services contractor is needed, then at its discretion a competitive process similar to a Request for Proposal may be used for the selection of the contractor. The Contracting Agency shall provide such

information and such detail as in its discretion is reasonably necessary to allow prospective candidates to prepare a proposal adequately;
(b) If part or all of the project is directly funded by the federal government, then the applicable federal statutes, regulations and procedures shall be followed and shall supersede these rules if funding specifically requires compliance with federal processes. If there are no applicable federal statutes, regulations or procedures, then these rules shall apply.
(c) If the estimated value of services is $50,000 or less, the Contracting Agency shall document the screening and selection process.
(d) If the estimated value of services is more than $50,000, the Contracting Agency may prepare a Request for Proposals. The intent of this section is that the Contracting Agency will use a more formal approach to the solicitation as the estimated contract value increases.
(e) The Contracting Agency shall receive and evaluate the Proposals offered by the candidates under subsection (d) above. Such evaluation shall include the candidate's proposed method to accomplish the work required, including, where appropriate, demonstrated capability to use innovative methods to achieve desired performance. Cost may be considered, but should not be the sole criterion. The Contracting Agency may negotiate with one or more qualified candidate(s) as it deems appropriate.
(f) **Single Candidate**. Notwithstanding subsection (d) above, where:
(A) only a single candidate known to the Contracting Agency is qualified to perform the particular services required; or
(B) only a single candidate has reasonable access to factual, technical or statistical information necessary to perform the services required; or
(C) where a candidate has performed previous services related to the services now required so that it would be cost effective to contract with that candidate, then the Contracting Agency may engage solely in negotiations with that candidate. A contract complying with these Rules is still mandatory.
(g) **Architects, Engineers, on State-Funded Contracts**. Notwithstanding any other provision of these Rules, if the County is contracting for the services of architects, engineers, land surveyors, or related services, as defined in ORS 279C.100, on a state-funded project where the percentage of state funding and project value exceed the amounts set forth in ORS 279C.110(2), then the County shall follow the procurement process set forth in that statute and the provisions of Oregon Administrative Rules chapter 137, Division 48.
(h) No work shall be performed until the contract is approved unless there is an emergency because of time or other unforeseen events where, in the opinion of the Public Contracting Officer, the service must commence immediately. Notwithstanding the foregoing, the contract shall be executed as soon as reasonably practicable.

Stat. Auth.: ORS 279A.055
Stats. Implemented: ORS 279B.050
[Adopted by Order NO. 2005-34, enacted 2-24-05]

DISPOSITION OF PERSONAL PROPERTY

C-046-0610 Auction Sales of Personal Property
Personal Property may be sold at auction if the Contracting Agency determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive Bid or Proposal.
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0620 Sales of Personal Property
(1) When the current market value per item is deemed to be less than $5,000, the Contracting Agency may sell Personal Property, including recyclable or reclaimed materials, without obtaining competitive Bids or Proposals if the following conditions are complied with:

(a) determination has been made by the Purchasing Manager that the property is not needed for other Contracting Agency purposes; and

(b) The director of the department and the Purchasing Manager have determined that a negotiated sale is likely to result in increased net revenue.

(2) When the current value per item is deemed to exceed $5,000, the Personal Property must be offered for competitive Bids or Proposals and be publicly advertised, or be offered for sale at public auction in accordance with C-046-610. If no Bids or Proposals are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible Bidder or the best Proposer, all Bids or Proposals may be rejected and the Contracting Agency may negotiate a sale subject to the following conditions:

(a) An appraisal of the market value of the property is obtained and documented and the negotiated sale price equals at least 85% of appraised value; or

(b) The sale amount exceeds the highest bid received through the bidding or auction process.

(3) The Contracting Agency shall maintain a record of all sales authorized by subsections (1) and (2).
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0630 Liquidation Sales of Personal Property
The Contracting Agency may sell Personal Property through a commercially recognized third party liquidator without obtaining competitive Bids or Proposals, if the Contracting Agency has determined that a liquidation sale will result in increased net revenue and the selection of the liquidator was conducted by a competitive selection process.
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-046-0640 Donations of Personal Property
(1) The Contracting Agency may sell or donate Personal Property, including recyclable or reclaimed materials, without obtaining competitive Bids or Proposals, to the following activities:

(a) Another public agency; or

(b) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any Contracting Agency or state agency; or

(c) Any recognized nonprofit activity.

(2) The Contracting Agency shall maintain a record of all transfers, donations or sales authorized by this rule.
[Adopted by Order NO. 2005-34, enacted 2-24-05]

REPEALED RULES

C-046-0700 Repealed Rules
Clackamas County Local Contract Review Board Rules C-100-010 through C-160-020 are repealed effective March 1, 2005. The repealed rules will continue to apply to the solicitation of Public Contracts first advertised, but if not advertised then entered into, before March 1, 2005.
[Adopted by Order NO. 2005-34, enacted 2-24-05]

CLACKAMAS COUNTY
LOCAL CONTRACT REVIEW BOARD RULES
DIVISION C-047

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES
GENERAL PROVISIONS

C-047-0000 Application
These division 47 rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods and/or Services. These division 47 rules become effective on March 1, 2005 and apply to Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.015
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-047-0100 Definitions
(1) "**Advantageous**" means in the Contracting Agency's best interests, as assessed according to the judgment of the Contracting Agency.
(2) "**Affected Person**" or "**Affected Offeror**" means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.
(3) "**Scope**" means the range and attributes of the Goods or Services described in the applicable Procurement document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

SOURCE SELECTION

C-047-0250 Methods of Source Selection; Feasibility Determinations; Cost Analysis
(1) **Competitive Sealed Bids or Proposals.** Except as permitted by these Rules, or ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, a Contracting Agency shall Award a Public Contract for Goods or Services based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 or competitive sealed Proposals pursuant to ORS 279B.060.
(2) **Written Cost Analysis for Contracts for Services.** Before conducting the Procurement of a Contract for Services that is subject to ORS 279B.030 to 279B.036, a

Contracting Agency must, in the absence of a determination under section 34 of that enactment that performing the services with the Contracting Agency's own personnel and resources is not feasible, conduct a Written cost analysis.
(3) **Feasibility Determination for Contracts for Services.** A Contracting Agency may proceed with the procurement of a Contract for Services without conducting a cost analysis under ORS 279B.033, if the Contracting Agency makes Written findings that one or more of the special circumstances described in ORS 279B.036, make the Contracting Agency's use of its own personnel and resources to provide the Services not feasible.
(4) **Special Circumstances.** The special circumstances identified in 279B.036 that require a Contracting Agency to procure the Services by Contract include any circumstances, conditions or occurrences that would make the Services, if performed by the Contracting Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Contracting Agency.
(5) **Written Cost Analysis** under ORS 279B.033.
(a) **Basic Comparison.** The Written cost analysis must compare an estimate of the Contracting Agency's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, The Contracting Agency may proceed with the Procurement for Services only if it determines that the Contracting Agency would incur more cost in performing the Services with the Contracting Agency's own personnel than it would incur in procuring the Services from a Contractor. In making this determination, the cost the Contracting Agency would incur in procuring the Services from a Contractor includes the fair market value of any interest in equipment, materials or other assets the Contracting Agency will provide to the Contractor for the performance of the Services.
(b) **Costs of Using Contracting Agency's Own Personnel and Resources.** When estimating the Contracting Agency's cost of performing the Services, the Contracting Agency shall consider cost factors that include:
(A) The salary or wage and benefit costs for the employees of the Contracting Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.
(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the Services.
(C) The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.
(D) Any costs related to stopping and dismantling a project or operation because the Contracting Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.
(E) The miscellaneous costs related to performing the Services. These costs exclude the Contracting Agency's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the

Services and would not be incurred unless the Contracting Agency performed the Services.
(F) ORS 279B.033(1)(a) provides that an estimate of the Contracting Agency's costs of performing the Services includes the costs described in subsections (5)(b)(A) through (E) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the cost to the Contracting Agency of performing the Services. For example, if the Contracting Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Contracting Agency may consider those actual costs in making its estimate.
(c) **Costs a Potential Contractor Would Incur.** When estimating the costs a potential Contractor would incur in performing the Services, the Contracting Agency shall consider cost factors that include:
(A) The average or actual salary or wage and benefit costs for Contractors and Contractor employees:
(i) Who work in the business or industry most closely involved in performing the Services; and (ii) Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.
(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.
(C) The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in subsection (5)(c) (A) and (B) of this rule over the expected duration of the Procurement.
(D) ORS 279B.033(1)(b) provides that an estimate of the costs a potential Contractor would incur in performing the Services includes the costs described in subsections (5)(c)(A) through (C) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if the Contracting Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, the Contracting Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Contracting Agency may consider what it actually paid out under a Contract for the same or similar Services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five years preceding the date of the cost estimate. The Contracting Agency must take into account, when considering the pricing offered in previous Bids, Proposals or Contracts, adjustments to the pricing in light of measures of market price adjustments like the consumer price indexes that apply to the Services.
(6) **Decision Based on Cost Comparison.** After comparing the difference between the costs estimated for the Contracting Agency to perform the Services under section (5)(b) and the estimated costs a potential Contractor would incur in performing the Services under section (5)(c), the Contracting Agency may proceed with the Procurement only if the Contracting Agency would incur more cost in performing the Services with the agency's own personnel and resources than it would incur in procuring the Services from a Contractor.
(7) **Exception Based on Salaries or Wages and Benefits.** If the sole reason that the costs estimated for the Contracting Agency to perform the Services under section (5)(b)

exceed the estimated costs a potential Contractor would incur in performing the Services under section (5)(c) is because the average or actual salary or wage and benefit costs for Contractors and their employees estimated under subsection (5)(c)(A) are lower than the salary or wage and benefit costs for employees of the Contracting Agency under subsection (5)(b)(A), then the Contracting Agency may not proceed with the Procurement.

(8) **Exception Based on Lack of Contracting Agency Personnel and Resources; Reporting.** In cases in which the Contracting Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Contracting Agency nevertheless may proceed with the Procurement if, at the time the Contracting Agency intends to conduct the Procurement, the Contracting Agency determines that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them. When a Contracting Agency conducts a Procurement under this section, the Contracting Agency must:

(a) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them and of the basis for the Contracting Agency's decision to proceed with the Procurement.

(b) Provide to its Local Contract Review Board, each calendar quarter, copies of each Written cost analysis and Written determination.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.050; 279B.030 to 279B.036
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.
]

C-047-0255 Competitive Sealed Bidding

(1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in C-047-0300.

(2) **Invitation to Bid.** In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) **General Information.**

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See C-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and

(G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See C-047-0430).

(b) **Contracting Agency Need.** The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. The Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contracting Agency for good cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) **Bidding and Evaluation Process.**

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a).; and

(C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to C-047-0600(4)(c), the Contracting Agency shall state in the Solicitation Document that it may award to more than one Bidder.

(d) **Applicable preferences** pursuant to ORS 279B.055(6)(b).

(e) [reserved]

(f) **Contract terms and conditions** in the form of Contract provisions the Contracting Agency determines are applicable to the Procurement. As required by ORS 279B055, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-047-0257 Multistep Sealed Bids

(1) **Generally**. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Bids ~~pursuant to~~under ORS 279B.055(12).

(2) **Phased Process**. Multistep bidding is a phased process that seeks ~~necessary~~ information or unpriced technical Bids in the ~~initial~~ first phase ~~and~~ combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the ~~initial~~ first phase to submit competitive sealed price Bids ~~on the technical Bids~~ in the ~~final~~ second phase. The Contract, if Awarded, ~~shall~~ must be Awarded to the lowest Responsible Bidder. If time is a factor, the Contracting Agency may require Bidders to submit a separate sealed price Bid during the initial phase to be opened after the technical evaluation.

(3) **Public Notice**. ~~Whenever multistep sealed Bids are used, public notice for the first phase shall be given~~ When a Contracting Agency uses multistep sealed bidding, the Contracting Agency must give public notice for the first phase in accordance with C-047-0300. Public notice is not required for the subsequent phases. However, a Contracting Agency ~~shall~~ must give notice of subsequent phases to all Bidders ~~and~~ , inform Bidders of the right to protest Addenda issued after the initial Closing ~~pursuant~~ under to C-047-430 and inform Bidders excluded from the subsequent phases of the right, if any, to protest their exclusion ~~pursuant to~~under C-047-0720.

(4) **Procedures Generally**. In addition to the procedures set forth in C-047-0300 through C-047-0490, a Contracting Agency ~~shall~~ must employ the procedures set forth in this rule for multistep bidding and in the Invitation to Bid.:

~~(a) **Solicitation Protest**. Prior to the Closing of phase one, a Contracting Agency shall provide an opportunity to protest the solicitation and under ORS 279B.405 and C-047-0730.~~

~~(b) **Addenda Protest**. A Contracting Agency may, provide an opportunity to protest any Addenda issued during phase two pursuant to C-047-0430(3)(b).~~

~~(c) **Exclusion Protest**. A Contracting Agency may, but is not required to provide an opportunity for a Bidder to protest exclusion from the second round of multistep sealed Bids as set forth in C-047-0720.~~

~~(d) **Administrative Remedy**. Bidders may submit a protest to any Addenda or to any action by the Contracting Agency that has the effect of excluding the Bidder from the second phase of multistep bidding to the extent such protests are provided for in the Solicitation Document or required by this section. Failure to so protest shall be considered the Bidder's failure to pursue an administrative remedy made available to the Bidder by the Contracting Agency.~~

~~(e) **Award Protest**. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and C-047-0740. An Affected Bidder may protest, for any of the bases set forth in C-047-0720(2), its exclusion from the second phase of a multistep sealed Bid, or an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.~~

(5) **Procedure for Phase One of Multistep Sealed Bids**.

(a) Form. Multistep sealed bidding ~~shall~~ must be initiated by the issuance of an Invitation to Bid in the form and manner required for competitive sealed Bids except as ~~hereinafter~~ provided in this Rule. In addition to the requirements set forth in C-047-0255(2), the multistep Invitation to Bid ~~shall~~ must state:

(A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting agency will use to conduct the Procurement ~~un-priced technical Bids are requested~~;

(B) ~~Whether price Bids are to be submitted at the same time as un-priced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;~~ ~~(C)~~ That the Contracting Agency requests unpriced technical Bids ~~solicitation is a multistep sealed Bid Procurement~~, and that the Contracting Agency will consider price Bids ~~priced Bids will be considered~~only in the second phase and only from those Bidders whose unpriced technical Bids are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as unpriced technical Bids and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(D) The criteria to be used in the evaluation of unpriced technical Bids~~;~~.

(b) Evaluation. The Contracting Agency must evaluate unpriced technical Bids in accordance with the criteria set forth in the Invitation to Bid.

~~(E) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the un-priced technical Bids;~~

~~(F) That the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid.~~

~~(G) Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.~~

~~(b) Addenda to the Invitation to Bid. After receipt of un-priced technical Bids, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted un-priced technical Bids.~~

~~(c) Receipt and Handling of Un-priced Technical Bids. Un-priced technical Bids need not be opened publicly.~~

~~(d) Evaluation of Un-Priced Technical Bids. Un-priced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Un-priced technical Bids shall be categorized as:~~

~~(A) Eligible;~~

~~(B) Potentially eligible; that is, reasonably susceptible of being made eligible; or~~

~~(C) Ineligible. The Contracting Agency shall record in writing the basis for determining a Bid ineligible and make it part of the Procurement file. The Contracting Agency may initiate phase two of the procedure if, in the Contracting Agency's opinion, there are sufficient eligible un-priced technical Bids to assure effective price competition in the second phase without technical discussions. If the Contracting Agency finds that such is not the case, the Contracting Agency may issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in subsection (5)(e) of this rule.~~

~~(e) Discussion of Un-priced Technical Bids. The Contracting Agency may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one un-priced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Closing of the final step established by the Contracting~~

~~Agency. Such submission may be made at the request of the Contracting Agency or upon the Bidder's own initiative.~~

~~(f) Notice of Ineligible Un-priced Technical Bid. When the Contracting Agency determines a Bidder's un-priced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.~~

~~(g) Mistakes During Multistep Sealed Bidding. Mistakes may be corrected or Bids may be withdrawn during phase one:~~

~~(A) Before un-priced technical Bids are considered;~~

~~(B) After any discussions have commenced under subsection(5)(e);~~

~~(C) When responding to any Addenda of the Invitation to Bid; or~~

~~(D) In accord with C-047-0470.~~

(6) **Procedure for Phase Two of Multistep Sealed Bids**.

(a) After the completion of phase one, if the Contracting Agency does not cancel the solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

~~Initiation. Upon the completion of phase one, the Contracting Agency shall either:~~

~~(A) Open price Bids submitted in phase one (if price Bids were required to be submitted) from Bidders whose un-priced technical Bids were found to be eligible; or~~

~~(B) If price Bids have not been submitted, technical discussions have been held, or Addenda to the Invitation to Bid have been issued, invite each eligible Bidder to submit a price Bid.~~

(b) ~~Conduct.~~ A Contracting Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule or the Invitation to Bid;

(B) No public notice need be given of the ~~this~~ invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; Amended by Order No. ___, enacted ___]

C-047-0260 Competitive Sealed Proposals

(1) **Generally**. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Contracting Agency must use a Request for Proposal ~~is used~~ to initiate a competitive sealed Proposal solicitation. ~~and~~ The Request for Proposal must ~~shall~~ contain the information required by ORS 279B.060(2) and by section 2 of this rule. The Contracting Agency ~~shall~~ must provide public notice of the competitive sealed Proposal solicitation as set forth in C-047-0300.

(2) **Request for Proposal**. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal ~~shall~~ must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference; ~~and~~

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See C-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See C-047-0430).

(b) **Contracting Agency Need.** The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c) the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning, or ~~and~~ land surveying services, or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for good cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) **Proposal and Evaluation Process.**

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency ~~shall~~ must set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060~~(2)(h)(E)~~(3)(e) Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency; ~~and~~

(C) ~~If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to C-047-0600(4)(d), the Contracting Agency must state in the Solicitation Document that it may award to more than one Proposer.~~ If the Contracting Agency's solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency must generally describe, in the Solicitation Document, the criteria or parameters the Contracting Agency will apply to determine the Competitive Range. The Contracting Agency, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with C-047-0262(1)(a)(B).

(d) **Applicable Preferences** described in ORS 279A.120, 279A.125(2) and 282.210.

(e) [reserved]

(f) **Contract terms and conditions.** All ~~C~~contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. *See* C-047-0260(3).

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the Contracting Agency may specify that it will include or use Proposer~~'s~~' terms and conditions that have been pre-negotiated under C-047- 0551, but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions.

(5) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency must document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. A Contracting Agency will have Good Cause to specify otherwise when the Contracting Agency determines:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software,

components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;
(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
(d) That other circumstances exist in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10; amended by Order No. ___, enacted ___.]

C-047-0261 Procedures for Competitive Range, Multi-tiered and Multistep Proposals

(1) **Generally**. A Contracting Agency may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060~~(6)(b)~~(8) and this rule. In addition to the procedures set forth in C-047-0300 through C-047-0490 for methods of Contractor selection, Contracting Agency may provide for a multitiered or multi-step selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers. A Contracting Agency may employ one or more, or any combination, of the procedures set forth in this rule for Competitive Range, multi-tiered and multistep Proposals.
(2) ~~**Solicitation Protest**. Prior to the initial Closing, a Contracting Agency shall provide an opportunity to protest the solicitation under ORS 279B.405 and C-047-0730.~~ ORS 279B.060(3)(d), (e) and (8) authorize a Contracting Agency to employ methods of Contractor selection that include, but are not limited to, multi-tiered or multistep processes that embrace:
(a) The evaluation of Proposals only, including the evaluations of serial Proposals (a series of more than one Proposal from each Proposer that remains eligible in the competition at the particular tier of the competition);
(b) The use of Proposals in connection with discussions with Proposers that lead to best and final Offers;
(c) The use of Proposals in connection with serial negotiations or simultaneous negotiations with Proposers that lead to best and final Offers or to the award of a Contract or multiple Contracts;
(d) The use of Proposals in connection with competitive negotiations with Proposers that lead to best and final Offers or to the award of a Contract or multiple Contracts; and
(e) The use of Proposals in multi-tiered or multistep competition designed to identify, at each stage of the competition, a class of Proposers that fall within a Competitive

Range of Proposers that have a reasonable chance of being determined the most Advantageous Proposer or, in multiple-award situations, a reasonable chance of being determined an awardee of a Public Contract. Multi-tiered and multistep competitions may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In multi-tiered and multistep competitions, a Contracting Agency may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, as determined in the discretion of the Contracting Agency.

(3) ~~**Addenda Protest**. A Contracting Agency may provide an opportunity to protest, pursuant C-047-0430, any Addenda issued pursuant to ORS 279B.060(6)(d).~~ When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract or Contracts and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(4) **Exclusion Protest**. A Contracting Agency may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in C-047-0720.

(5) ~~**Administrative Remedy**. Proposers may submit a protest to any Addenda or to any action by the Contracting Agency that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.~~

~~(6)~~ **Award Protest**. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and C-047-0740. An Affected Proposer may protest, for any of the bases set forth in C-047-0720(2), its exclusion from the Competitive Range or any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest ~~such~~ the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

(6) Competitive Range. When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that only a

single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with C-047-0720.

(7) Discussions. The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.

(8) Negotiations. A Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. A Contracting Agency may negotiate:

(a) The statement of work;

(b) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(c) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(9) Terminating Negotiations. At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer

with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposer's Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(10) Best and Final Offers. If a Contracting Agency requires best and final Offers, the Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be construed as their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offers. The Contracting Agency shall conduct the evaluations as described in C-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(11) Multistep Sealed Proposals. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals under ORS 279B.060(8)(b)(g). Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit competitive sealed price Proposals on the technical Proposals. The Contracting Agency must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) Public Notice. When a Contracting Agency uses multistep sealed Proposals, the Contracting Agency shall give public notice for the first phase in accordance with C-

047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under C-047-0720.

(b) Procedure for Phase One of Multistep Sealed Proposals. A Contracting Agency must initiate a multistep sealed Proposals Procurement by issuing a Request for Proposals in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposals must state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of unpriced technical Proposals; and

(D) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.

(c) Addenda to the Request for Proposals. After receipt of unpriced technical Proposals, Addenda to the Request for Proposals shall be distributed only to qualified Proposers who submitted unpriced technical Proposals.

(d) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(e) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.

(f) Discussion of Unpriced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Proposal to any other Proposer.

(g) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(h) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule.

(j) No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065, 279B.060
Stats. Implemented: ORS 279B.060
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10; amended by Order No. ____, enacted ____.]

~~C-047-0262 Competitive Range, Discussions and Negotiations~~

~~(1) **Competitive Range**. When a Contracting Agency's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:~~

~~(a) Determining Competitive Range.~~

~~(A) The Contracting Agency shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency shall determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions with Proposers for the purpose of correcting deficiencies in Proposals under subsection 2 of this rule.~~

~~(B) The Contracting Agency may increase or decrease the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater or less than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most advantageous Proposer.~~

~~(b) Protesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with C-047-0720.~~

~~(c) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with subsection (1)(b) expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may either:~~

~~(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.~~

~~(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with C-047-0740 and ORS 279B.410.~~

~~(ii) After the protest period provided in accordance with C-047-0740 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence negotiations in accordance with section (3) of this rule with the highest-ranked Proposer in the Competitive Range; or~~

~~(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in section (2) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in section (3) of this rule with the Proposers in the Competitive Range.~~

~~(2) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive best and final Offers (See C-047-0262(4)) from all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers"), the Contracting Agency shall proceed as follows:~~

~~(a) Initiating Discussions. The Contracting Agency shall initiate oral or written discussions with all "eligible Proposers" regarding their Proposals with respect to the~~

~~provisions of the Request for Proposals that the Contracting Agency identified in the Request for Proposals as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:~~

~~(A) Informing eligible Proposers of deficiencies in their initial Proposals;~~

~~(B) Notifying eligible Proposers of parts of their Proposals for which the Contracting Agency would like additional information; or~~

~~(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.~~

~~(b) Conducting Discussions. The Contracting Agency may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section 2, but need not conduct the same amount of discussions with each eligible Proposer. The Contracting Agency may terminate discussions with any eligible Proposer at any time. However, the Contracting Agency shall offer all eligible Proposers the same opportunity to discuss their Proposals with the Contracting Agency before the Contracting Agency notifies eligible Proposers of the date and time pursuant to section 4 that best and final Proposals will be due.~~

~~(A) In conducting discussions, the Contracting Agency:~~

~~(i) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;~~

~~(ii) Shall disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(6)(a)(B) or (C);~~

~~(iii) May adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposal.~~

~~(B) At any time during the time allowed for discussions, the Contracting Agency may:~~

~~(i) Continue discussions with a particular eligible Proposer;~~

~~(ii) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or~~

~~(iii) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section 4 of this rule to the eligible Proposers requesting best and final Offers.~~

~~(3) **Negotiations**.~~

~~(a) Initiating Negotiations. The Contracting Agency may commence serial negotiations with the highest ranked eligible Proposers or commence simultaneous negotiations with all eligible Proposers as follows:~~

~~(A) After initial determination of which Proposals are Responsive; or~~

~~(B) After initial determination of the Competitive Range in accordance with section (1) of this rule; or~~

~~(C) After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See section (2) of this rule).~~

~~(b) Conducting Negotiations.~~

~~(A) Scope. The Contracting Agency may negotiate:~~

~~(i) The statement of Work;~~

~~(ii) The Contract Price as it is affected by negotiating the statement of Work; and~~

~~(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit, and the Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.~~

~~(B) Terminating Negotiations. At any time during discussions or negotiations that the Contracting Agency conducts in accordance with sections (2) or (3) of this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:~~

~~(i) The eligible Proposer is not discussing or negotiating in good faith; or~~

~~(ii) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.~~

~~(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer in accordance with paragraph 3(b)(B) of this rule, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the process described in section (3) of this rule until the Contracting Agency has either:~~

~~(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or~~

~~(B) Completed one round of discussions or negotiations with all eligible Proposers, unless the Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Contracting Agency shall continue to negotiate until it determines that it has completed all necessary rounds of discussions or negotiations.~~

~~(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:~~

~~(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;~~

~~(B) May disclose other eligible Proposer's Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.~~

~~(e) Any oral modification of a Proposal resulting from negotiations under this section (3) shall be reduced to Writing by the Proposer.~~

~~(4) **Best and Final Offers**. If a Contracting Agency requires best and final Offers, it shall establish a common date and time by which eligible Proposers must submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. All eligible Proposers shall also be informed if they do not~~

~~submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct evaluations conducted as described in C-047-0600. The Contracting Agency shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.~~

~~Stat. Auth.: ORS 279A.065~~
~~Stats. Implemented: ORS 279B.060~~
~~[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]~~

~~C-047-0263 Multistep Sealed Proposals~~

~~(1) **Generally**. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279.060(6)(b)(G).~~

~~(2) **Phased Process.** Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the final phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the Contracting Agency may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.~~

~~(3) **Public Notice**. Whenever multistep sealed Proposals are used, public notice for the first phase shall be given in accordance with C-047-0300. Public notice is not required for the subsequent phases. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to C-047-0720.~~

~~(4) **Procedure for Phase One of Multistep Sealed Proposals**.~~

~~(a) Form. Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in C-047-0260(2), the multistep Request for Proposal shall state:~~

~~(A) That un-priced technical Proposals are requested;~~

~~(B) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;~~

~~(C) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;~~

~~(D) The criteria to be used in the evaluation of un-priced technical Proposals;~~

~~(E) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical Proposals;~~

~~(F) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal.~~

~~(G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.~~

~~(b) Addenda to the Request for Proposal. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.~~

~~(c) Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.~~

~~(d) Evaluation of Un-Priced Technical Proposals. Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Un-priced technical Proposals shall be categorized as:~~

~~(A) Qualified;~~

~~(B) Potentially qualified; that is, reasonably susceptible of being made qualified; or~~

~~(C) Unqualified. The Contracting Agency shall record in writing the basis for determining a Proposal unqualified and make it part of the Procurement file. The Contracting Agency may initiate phase two of the procedure if, in the Contracting Agency's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the second phase without technical discussions. If the Contracting Agency finds that such is not the case, the Contracting Agency shall issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in subsection 4(e).~~

~~(e) Discussion of Un-priced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one un-priced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing date established by the Contracting Agency. Such submission may be made at the request of the Contracting Agency or upon the Proposer's own initiative.~~

~~(f) Notice of Unqualified Un-priced Technical Proposal. When the Contracting Agency determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.~~

~~(g) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during phase one:~~

~~(A) Before un-priced technical Proposals are considered;~~

~~(B) After any discussions have commenced under subsection 4(e) of this rule;~~

~~(C) When responding to any Addenda to the Request for Proposal; or~~

~~(D) In accordance with C-047-0470.~~

~~(5) **Procedure for Subsequent Phases**.~~

~~(a) Initiation. Upon the completion of phase one, the Contracting Agency shall either:~~

~~(A) Open price Proposals submitted in phase one (if price Proposals were required to be submitted) from Proposers whose un-priced technical Proposals were found to be qualified; or~~

~~(B) If price Proposals have not been submitted, technical discussions have been held, or Addenda to the Request for Proposals have been issued, invite each qualified Proposer to submit price Proposals.~~

~~(b) Conduct. Phase two shall be conducted as any other competitive sealed Proposal solicitation except:~~

~~(A) As specifically set forth in this rule; and~~

~~(B) No public notice need be given of the request to submit price Proposals because such notice was previously given.~~

~~Stat. Auth.: ORS 279A.065~~
~~Stats. Implemented: ORS 279B.060~~
~~[Adopted by Order NO. 2005-34, enacted 2-24-05]~~

C-047-0265 Small Procurements
(1) **Generally**. For Procurements of Goods or Services less than or equal to $5,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 and in accordance with policies and procedures promulgated by the Contracting Agency pursuant to ORS 279A.070.
(2) **Amendments**. A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance C-047-0800, but the cumulative amendments shall not increase the total Contract Price to greater than $6,000.

Stat. Auth.: ORS 279A.065 & ORS 279B.065
Stats. Implemented: ORS 279B.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0270 Intermediate Procurements
(1) **Generally**. For Procurements of Goods or Services greater than $5000 and less than or equal to $150,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.
(2) **Written Solicitations**. For intermediate Procurements equal to or exceeding $75,000, a Contracting Agency shall use a Written solicitation to obtain quotes, Bids or Proposals.
(3) **Negotiations**. A Contracting Agency may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer, or to effect modifications that will make the quote or Offer more ~~a~~Advantageous to the Contracting Agency.
(4) **Amendments**. A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with C-047-0800 "Contract Amendments."

Stat. Auth.: ORS 279A.065 & ORS 279B.070
Stats. Implemented: ORS 279B.070
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-047-0275 Sole-source Procurements
(1) **Generally**. A Contracting Agency may Award a Public Contract without competition as a sole-source Procurement pursuant to the requirements of ORS 279B.075.
(2) **Public Notice**. If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and C-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective

Contractor and include the date, time and place that protests are due. The Contracting Agency shall give such public notice at least seven (7) Days before Award of the Contract.
(3) **Protest**. An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with C-047-0710.

Stat. Auth.: ORS 279A.065 & ORS 279B.075
Stats. Implemented: ORS 279B.075
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0280 Emergency Procurements
A Contracting Agency may Award a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances. However, for emergency procurement of construction services that are not public improvements, see ORS 279B.080(2). A contract awarded as an Emergency Procurement may be amended as set forth in C-047-0800.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.080
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-047-0285 Contract-Specific Special Procurements
(1) **Generally**. A Contracting Agency may Award a Public Contract as a contract-specific Special Procurement pursuant to the requirements of ORS 279B.085.
(2) **Public Notice**. A Contracting Agency shall give public notice of its request for approval of a contract-specific Special Procurement in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and C-047-0300. The public notice shall describe the Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give such public notice of its request for approval of a contract-specific Special Procurement at least seven (7) Days prior to the approval of the Special Procurement by the Contract Review Authority.
(3) **Protest**. An Affected Person may protest the approval of or request for approval of a contract-specific Special Procurement in accordance with ORS 279B.400 and C-047-0700.
(4) **Approval Procedure**. To seek approval of a contract-specific special procurement, a Contracting Agency shall submit a written request to the Board that describes the proposed contracting procedure, the goods or services to be acquired, and the circumstances that justify the use of a special procurement under the standards set forth in subsection (5) of this section.
(5) **Approval Standard**. The Board may approve a contract-specific special procurement if it finds that the written request submitted under subsection (4) of this section demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed by the Board will:

(a) Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
(b)(A) Result in substantial cost savings to the contracting agency or to the public; or

(B)Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.085
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0286 Class Special Procurements; Definitions
Contracting Agencies may award Class Special Procurements in classes approved by the Board, pursuant to ORS 279B.085. Class Special Procurements allow Contracting Agencies to enter into a series of contracts over time without following the requirement of competitive sealed bidding, competitive proposals, or intermediate procurements, provided that the contract is within a class described in C-047-0288.
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0288 Class Special Procurements; by Rule
The Board declares the following as class special procurements:

(1) **Equipment Repair and Overhaul.**
Contracts for equipment repair or overhaul may be let without obtaining competitive Bids or Proposals , subject to the following conditions:
(a) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
(b) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.
(c) If the contract exceeds $50,000, the Contracting Agency shall document in its procurement file the reasons why competitive Bids or Proposals were deemed to be impractical.

(2) **Laboratory and Medical Supplies.**
The Contracting Agency may, regardless of dollar value and without obtaining competitive Bids or Proposals, contract for the direct purchase of laboratory and medical supplies.

(3) **Gasoline, Diesel Fuel, Heating Oil, Lubricants, Asphalt, and Rock.**
The Contracting Agency is exempt from competitive Bid or Proposal requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants, asphalts and rock if the Contracting Agency seeks competitive quotes, makes its purchase from the least expensive source, and retains written justification for the purchase made.

(4) **Copyrighted Materials.**
The Contracting Agency may purchase copyrighted materials without obtaining competitive Bids or Proposals, and regardless of dollar value, if there is only one known supplier available for such goods. Examples of copyrighted materials covered by this exemption may include, but are not limited to, new books, periodicals, curriculum materials, reference materials, audio and visual media, and non-mass-marketed software from a particular publisher or its designated distributor.

(5) **Purchases of Used Personal Property.**
The Contracting Agency may purchase used personal property without obtaining competitive Bids or Proposals. For purchases of used personal property over $50,000, three competitive quotes shall be obtained. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

(6) **Advertising Contracts.**
The Contracting Agency may purchase advertising, regardless of dollar value, without obtaining competitive Bids or Proposals.

(7) **Temporary Housing Services.**
Contracts for temporary housing are exempt from competitive Bids or Proposals under the following conditions:

(a) When the prompt execution of a contract is required to provide temporary short term shelter.
(b) The term of the contract is not to exceed one year.
(c) The Contracting Agency should, where feasible, obtain competitive quotes.

(8) **Food Service Contracts.**

(a)For purposes of this rule, food service means a contract in which the contractor agrees to perform for the Contracting Agency all of the following functions: the purchase, preparation, and service of meals and related services.
(b)Contracts for food services may be let without competitive Bids or Proposals subject to the following conditions:

(A)Prior to the selection of a contractor, the Contracting Agency has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicit proposals including public advertisements in at least one newspaper of general circulation in the area where the contract is to be performed.
(B) The contractor is selected on the basis of the most competitive offer considering cost, quality of the product and the service to be rendered.

(9) **Food Items.**
Contracts for food items are exempt from competitive Bids or Proposals. The Contracting Agency should, where feasible, obtain competitive quotes.

(10) **Insurance Contracts.**
Contracts for insurance, including employee benefit insurance, may be awarded directly to an insurer after the Contracting Agency obtains proposals from an insurance consultant or agent of record. The consultant or agent of record shall be selected according to the procedure for personal services contracts. Among the services to be provided by the consultant is the securing of competitive proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility, and advice to the Contracting Agency about the costs and benefits of the various proposals. The Contracting Agency may then negotiate or enter into the insurance contract that appears the most advantageous to the Contracting Agency without advertisement or issuance of its own Request for Proposals.

(11) **Contract Amendments.**

Contract amendments that increase the original contract price may be made without obtaining competitive Bids or Proposals pursuant to C-047-0800, provided however that contract amendments relating to construction services are made pursuant to C-049-0910.

(12) **Ballots, Ballot Pages, and Ballot Cards.**
The Contracting Agency is exempt from competitive Bid or Proposal requirements for the printing of ballots, including ballot pages and labeling of ballot cards.

(13) **Concession Agreements.**

(a) Concession agreements may be let without competitive Bids or Proposals subject to the following conditions:

(A) Prior to the selection of a contractor, the Contracting Agency had made reasonable efforts to inform known companies providing such services of the subject matter of the contract and solicit proposals including public advertisements in at least one newspaper of general circulation in the area where the contract is to be performed.

(B) The contractor is selected on the basis of the most competitive offer considering cost, quality of the product and the service to be rendered.

(b) For purposes of this rule, "concession agreement" means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon lands owned by the Contracting Agency and under which the concessionaire makes payments to the Contracting Agency based, at least in part, on the concessionaire's revenue from sales. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit or other arrangement for the use of public property.

(14) **Telecommunications Services.**

(a) The intent of this rule is for the Contracting Agency to secure the most competitive, cost-effective telecommunications services, while meeting service performance requirements and reducing unnecessary administrative processing.

(b) "Telecommunications Services" means the purchase, lease or rental of the use of voice and data transmission facilities or services.

(c)In determining the appropriate procurement method for telecommunications services, the Contracting Agency will determine whether competition exists. In determining competition, the Contracting Agency may consider the following factors:

(A) The extent to which alternative providers exist in the relevant geographic and service market.

(B) The extent to which alternative services offered are comparable or substitutable in technology service provided and performance. For example, if the Contracting Agency's requirement is for digital services, analog services are not comparable or substitutable.

(C) The extent to which alternative providers can respond to the Contracting Agency's interests in consistency and continuity of services throughout its service area, volume discounts, and centralized management. The Contracting Agency must document for the record its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the Contracting Agency may solicit the information either through informal telephone or written contacts, or through a formal request for information.

(d) Upon determination that competition does not exist for the relevant service and geographical area, the Contracting Agency may proceed to secure the service on a sole source basis, as described in these Rules, and following all applicable rules and procedures.

(15) **Efficient Utilization of Existing Equipment or Supplies.**

(a) If the efficient utilization of the existing equipment or supplies requires compatible products or services of a particular manufacturer or seller, the Contracting Agency may purchase such particular product or service without obtaining competitive Bids or Proposals, subject to the following conditions:

(A) The product or service is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product price but also other items of expense such as costs related to quality or conversion.

(B) Prior to awarding the contract, the Contracting Agency has made reasonable effort to notify all known vendors of competing or comparable products or services of the intended specifications and invited such vendors to submit competing proposals. If the purchase does not exceed $50,000, such notice and invitation may be informal. If the amount of the purchase exceeds $50,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.

(16) **Purchases through Federal Programs.**

Notwithstanding any other provisions of these Rules, a procurement may be made without competitive bidding, competitive proposals, or other competition provided that:

(a) the procurement is made pursuant to a federal program described in ORS 279A.180,

(b) the Contracting Agency has federal authorization to purchase through the federal program, and

(c) notice of intent is published as provided in C-046-0440 for a Permissive Cooperative Procurement if it is estimated that the Contracting Agency will spend more than $250,000.

[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0289 Availability of Exemptions

(1) A contract which is exempt from competitive bidding under the statutes of the State of Oregon retains that exemption regardless of any provisions of these Local Contract Review Board rules.

(2) A contract which is exempt from competitive bidding under one of these Local Contract Review Board rules is not subject to requirements contained in another of these Local Contract Review Board rules.

[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0290 Cooperative Procurements

A Contracting Agency may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and C-046-0400 through C-046-0480.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.205

[Adopted by Order NO. 2005-34, enacted 2-24-05]

PROCUREMENT PROCESS

C-047-0300 Public Notice of Solicitation Documents

(1) **Notice of Solicitation Documents; Fee.** A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) **Advertising.** A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the Contracting Agency's Contract Review Authority has authorized the Contracting Agency to publish notice of Solicitation Documents on the Contracting Agency's Electronic Procurement System.

(3) **Content of Advertisement.** All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less then seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) **Obtaining Advertisement for Offers.** An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) **Fees.** The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) **Notice of Addenda**. The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with C-047-0430.

Stat. Auth.: ORS 279A.065, ORS 279B.055 & ORS 279B.060
Stats. Implemented: ORS 279B.055 & ORS 279B.060
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-047-0310 Bids or Proposals are Offers
(1) **Offer and Acceptance**. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.
(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in C-047-0480 or C-049-0410. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in C-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) **Contingent Offers**. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to C-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
(3) **Offeror's Acknowledgment**. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposers to propose alternative terms or conditions under C-047-0262, the Offeror's Offer includes any nonnegotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-047-0320 Facsimile Bids and Proposals
(1) **Contracting Agency Authorization**. A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of

receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document**. In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";

(e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0330 Electronic Procurement

(1) **Electronic Procurement Authorized.**

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its

receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) **Rules Governing Electronic Procurements**. The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division C-047 rules, unless otherwise set forth in this rule.

(3) **Preliminary Matters**. As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) **Offer Process**. A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with subsection 5(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) **Receipt of Electronic Offers**.

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division C-047 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on

a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division C-047 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) **Failure of the E-Procurement System**. In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in accordance with C-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

BID AND PROPOSAL PREPARATION

C-047-0400 Offer Preparation

(1) ***Instructions.*** An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) **Forms**. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) **Documents**. An Offeror shall provide the Contracting Agency with all documents and descriptive literature required by the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-047-0410 Offer Submission

(1) **Product Samples and Descriptive Literature**. A Contracting Agency may require product samples or descriptive literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of product samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) ***Identification of Offers.***

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify

Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document, provided however that the Contracting Agency at its discretion may accept (if received prior to the Closing) a facsimile modification of an Offer or facsimile withdrawal of an Offer.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) **Receipt of Offers**. The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-047-0420 Pre-Offer Conferences

(1) **Purpose**. A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) **Required Attendance**. The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) **Scheduled Time**. If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding**. Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Agency Announcement**. The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with C-047-0255(2) or C-047-0260(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0430 Addenda to Solicitation Document

(1) **Issuance; Receipt**. The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) **Notice and Distribution**. The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with C-047-0257, or a multi-tiered or multistep competitive sealed Proposal

process in accordance with C-047-0261 through C-047-0263. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) **Timelines; Extensions.**

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and C-047-0261 through C-047-0263 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in C-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under C-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with C-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

Stat. Auth.: ORS 279A.065 & ORS 279B.060
Stats. Implemented: ORS 279B.060
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-047-0440 Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with C-047-0400 and C-047-0410, unless otherwise specified in the

Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:
(a) Bid (or Proposal) Modification; and
(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).
(2) **Withdrawals.**
(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Contracting Agency.
(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.
(c) The Offeror shall mark the Written request to withdraw an Offer as follows:
(A) Bid (or Proposal) Withdrawal; and
(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).
(3) **Documentation.** The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers.
(1) **Receipt**. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").
(2) **Opening and Recording**. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to C-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0460 Late Offers, Late Withdrawals and Late Modifications
Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in C-047-0470 or C-047-0262.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0470 Mistakes
(1) **Generally**. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.
(2) **Contracting Agency Treatment of Mistakes**. A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;
(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and
(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes**. The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award**. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division C-047 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-047-0480 Time for Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0490 Extension of Time for Acceptance of Offer

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0495 Specifications; Brand Name Products
(1) **Generally**. The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to a special procurement authorized under ORS 279B.075 to 279B.085 or these Rules.
(2) **Equivalents**. A Contracting Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

QUALIFICATIONS AND DUTIES

C-047-0500 Responsibility of Bidders and Proposers
Before Awarding a Contract the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and C-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.110
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0525 Qualified Products Lists
A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0550 Prequalification of Prospective Offerors
(1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.
(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.120
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0551 Pre-Negotiation of Contract Terms and Conditions
A Contracting Agency may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such prenegotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Contracting Agency and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. A Contracting Agency may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When a Contracting Agency has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, a Contracting Agency may consider the terms and conditions in the Proposal evaluation process.
Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.015 and 279B.120
[Adopted by Order NO. 2010-21, enacted3/18/10]

C-047-0575 Debarment of Prospective Offerors
(1) **Generally.** A Contracting Agency may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.
(2) **Responsibility**. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.
(3) **Imputed Knowledge**. A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
(4) **Limited Participation**. A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.130
[Adopted by Order NO. 2005-34, enacted 2-24-05]

OFFER EVALUATION AND AWARD

C-047-0600 Offer Evaluation and Award
(1) **Contracting Agency Evaluation**. The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.
(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and C-046-0310 for Nonresident Bidders.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Contracting Agency determines that one or more Bids are identical under C-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in C-046-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Contracting Agency determines that one or more Proposals are identical under C-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in C-046-0300.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and C-046-0320.

(2) **Clarification of Bids or Proposals**. After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the Contracting Agency's sole discretion, needing clarification must be accorded such an opportunity. The Contracting Agency shall document clarification of any Bidder's Bid in the Procurement file.

(3) **Negotiations**.

(a) Bids. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with C-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and C-047-0262 After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with C-047-0800.

(4) **Award**.

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards - Bids.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple Awards may not be made for the purpose of dividing the Procurement into

multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & ORS 279B.060
Stats. Implemented: ORS 279B.055 & ORS 279B.060
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-047-0610 Notice of Intent to Award

(1) **Notice of Intent to Award**. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances require prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.

(2) **Finality**. The Contracting Agency's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to C-047-0740; or

(b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

Stat. Auth.: ORS 279A.065 & ORS 279B.135
Stats. Implemented: ORS 279B.135
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0620 Documentation of Award

(1) **Basis of Award**. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.

(2) **Contents of Award Record**. The Contracting Agency's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and C-047-0261 through C-047-0263, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0630 Availability of Award Decisions

(1) **Contract Documents**. To the extent required by the Solicitation Document, the Contracting Agency shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) **Availability of Award Decisions**. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals , in person or by submitting to the Contracting Agency a Written request. The requesting Person shall provide the name of the Solicitation and enclose a self-addressed, stamped envelope if requesting a mailed copy. In addition, the Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

(3) **Availability of Procurement Files**. The Contracting Agency shall make Procurement files available in accordance with applicable law, after notice of intent to Award or as otherwise provided in the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055 & ORS 279B.060

[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0640 Rejection of an Offer

(1) **Rejection of an Offer.**

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to ORS 200.065 or 200.075 (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's

deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);
(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);
(iv) Is legally qualified to contract with the Contracting Agency; and
(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) **Form of Business Entity**. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100 & 279B.110
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-047-0650 Rejection of All Offers

(1) **Rejection**. A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) **Criteria**. The Contracting Agency may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;
(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;
(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
(e) The Contracting Agency cancels the Procurement or solicitation in accordance with C-047-0660; or
(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0660 Cancellation of Procurement or Solicitation
(1) **Cancellation in the Public Interest**. A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.
(2) **Notice of Cancellation Before Opening**. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same manner that the Contracting Agency initially provided notice of the solicitation. Such notice of cancellation shall:
(a) Identify the Solicitation Document;
(b) Briefly explain the reason for cancellation; and
(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.
(3) **Notice of Cancellation After Opening**. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0670 Disposition of Offers if Procurement or Solicitation Canceled
(1) **Prior to Opening**. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.
(2) **After Opening**. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:
(a) May return Proposals in accordance with ORS 279B.060(5)(c); and.
(b) Shall keep Bids in the Procurement file.
(3) **Rejection of All Offers**. If the Contracting Agency rejects all Offers, the Contracting Agency may keep all Proposals and Bids in the Procurement file, or may return them to Offerors.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100
[Adopted by Order NO. 2005-34, enacted 2-24-05]

LEGAL REMEDIES

C-047-0700 Protests and Judicial Review of Special Procurements

(1) **Purpose**. An Affected Person may protest the approval of or request for approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval or request for approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) **Delivery**.

(a) Protest of Request for Approval of a Special Procurement. An Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within fourteen (14) Days after the first date of public notice of a proposed Special Procurement, unless a different protest period is provided in the public notice of the proposed Special Procurement.

(b) Protest of Approval of a Special Procurement. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within fourteen (14) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) **Content of Protest**. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) **Contract Review Authority Response**.

(a) Protest of Request for Approval of a Special Procurement: The Contract Review Authority shall not consider an Affected Person's protest of the Contracting Agency's request for approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the request for approval of a proposed Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or deny the request for approval of the Special Procurement.

(b) Protest of Approval of a Special Procurement: The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) **Judicial Review**. An Affected Person may not seek judicial review of the Contract Review Authority's denial of a protest of a request for approval of a Special Procurement. An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & ORS 279B.400
Stats. Implemented: ORS 279B.400
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0710 Protests and Judicial Review of Sole-Source Procurements
(1) **Purpose**. For sole-source Procurements requiring public notice under C-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.
(2) **Delivery**. Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.
(3) **Content of Protest**. The Written protest must include:
(a) A detailed statement of the legal and factual grounds for the protest;
(b) A description of the resulting harm to the Affected Person; and
(c) The relief requested.
(4) **Contract Review Authority Response**. The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.
(5) **Judicial Review**. Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.075
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations
(1) **Purpose**. An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) **Basis for Protest**. An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the Contracting Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)
(3) **Delivery**. Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.
(4) **Content of Protest**. The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.
(5) **Contracting Agency Response**. The Contracting Agency shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under C-047-0430 reflecting its disposition or cancel the Procurement or solicitation under C-047-0660.
(6) **Judicial Review**. Judicial review of the Contracting Agency's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0730 Protests and Judicial Review of Solicitations
(1) **Purpose**.
(a) A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.
(b) Contract-Specific Special Procurements. Notwithstanding section 1(a) of this rule, a Person may not protest, challenge, or review a Contract-Specific Special Procurement except upon the occurrence of the conditions set forth ORS 279B.405(2)(b).
(2) **Delivery**. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.
(3) **Content of Protest**. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to

the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.
(4) **Contracting Agency Response**. The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under C-047-0430 or cancel the Procurement or solicitation under C-047-0660.
(5) **Extension of Closing**. If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider and respond to the protest.
(6) **Clarification**. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.
(7) **Judicial Review**. Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & ORS 279B.405
Stats. Implemented: ORS 279B.405
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0740 Protests and Judicial Review of Contract Award
(1) **Purpose**. An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision.
(2) **Delivery**. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of intent to Award the Contract.
(3) **Content of Protest**. An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).
(4) **Contracting Agency Response**. The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.
(5) **Judicial Review**. Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & ORS 279B.410
Stats. Implemented: ORS 279B.410 & ORS 279B.415
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0745 Protests and Judicial Review of Qualified Products List Decisions (1) **Purpose**. A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's Goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.
(2) **Delivery**. Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's Goods from the qualified products list.
(3) **Content of Protest**. The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.
(4) **Contracting Agency Response**. The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's Goods on the qualified products list.
(5) **Judicial Review**. Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0750 Judicial Review of Other Violations
Any violation of ORS chapter 279A or 279B by a Contracting Agency for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.420
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0760 Review of Prequalification and Debarment Decisions
Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.425
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-047-0800 Contract Amendments

~~(1) **Generally**. This Rule on Amendments sets forth:~~

~~(a) A General Rule for Amendments in Section (2) applicable to Contracts for Goods and/or Services pursuant to the Code and these Rules; and~~

~~(b) Special Rules for Amendments in Section (3) et seq., applicable to different types of Contracts. These Special Rules supplement the General Rule, unless expressly stated otherwise.~~

~~(c) Definition of "**Amendment**." "Amendment" as used in this Rule means a Written modification to a Public Contract that is reasonably related to the Scope of the original Procurement and requires mutual agreement between the Contracting Agency and the Contractor.~~

~~(2) **General Rule for Amendments**.~~

~~(a) **Definitions**.~~

~~(A) **"Anticipated Amendment"** means:~~

~~(i) The Contracting Agency has stated in Writing in any Solicitation Document or the Original Contract that the Contracting Agency may amend that Contract; and~~

~~(ii) This required language in any Solicitation Document or the Original Contract describes or includes:~~

~~(I) The possibility of one or more Amendments;~~

~~(II) The general circumstances that might require an Anticipated Amendment to be issued under the Contract;~~

~~(III) The method that the Contracting Agency will use to finalize the details and costs of an Amendment; and~~

~~(IV) A general description of certain or known changes to the requirements of the Contract that may be anticipated or even planned for, but not necessarily quantified at the time of Contract execution. These changes may be specifically described in any Solicitation and Contract as:~~

~~(a) Extra Work;~~

~~(b) Additional Work;~~

~~(c) Work to be done if certain situations are encountered; or~~

~~(d) Changes in terms, conditions, price, or type of Work.~~

~~(B) **"Unanticipated Amendment"** means:~~

~~(i) An Amendment that is not an Anticipated Amendment.~~

(1) **Generally.** A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(~~b~~a) **Anticipated Amendments**. A Contracting Agency may make one or more ~~A~~anticipated ~~A~~amendments to a Contract without any additional competitive process and for an unlimited amount, provided:

(A) Scope. The ~~A~~anticipated ~~A~~amendment is reasonably related to the Scope of any original Solicitation Document or the Original Contract.

(B) Disclosure. ~~In accordance with the definition of an Anticipated Amendment, the Anticipated Amendment's circumstances, method, and changes were described in any Solicitation Document or the Original Contract, pursuant to Subsection (2)(a)(A).~~The Solicitation Document or the Original Contract described the possibility of one or more Amendments, the general circumstances that might

require an Amendment, and the method that the Contracting Agency would use to finalize the details and costs of an amendment.

(C) Original Contract. The Original Contract was awarded pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220; and

~~(D) [reserved];~~

~~(E)~~(D) Writing. All Amendments to Contracts must be in Writing and signed by the authorized representatives of the parties to the Contracts and must receive all required approvals before the Amendments will be binding on the Contracting Agency.

(~~e~~b) **Unanticipated Amendments**. A Contracting Agency may make unanticipated amendments to a Contract without additional competition in any of the following circumstances:

(A) Limited Amount. A Contracting Agency may make one or more ~~Unanticipated~~ Amendments to a Contract without any additional competitive process, provided:

(i) Scope. The ~~Unanticipated~~ Amendment is reasonably related to the Scope of any original Solicitation Document or the Original Contract;

(ii) Original Contract. The Original Contract was awarded pursuant to ORS 279B.055, 279B.060, ~~279B.065, 279B.070,~~ 279B.075, 279B.085, or 279A.200 through 279A.220; and

(iii) Limit. The cumulative amounts of one or more ~~Unanticipated~~ Amendments to a Contract under this subsection (A) must not exceed 25% of the Original Contract amount or $~~25,000~~150,000, whichever is greater.

(~~B~~B) Unlimited Amount. A Contracting Agency may make one or more ~~Unanticipated~~ Amendments to a Contract without any additional competitive process and for an unlimited amount, provided:

(i)(I) the amendment is made in order to settle a contract dispute which is the subject of litigation, or in which litigation is reasonably likely to occur; or

(II) the amendment is made to a personal services contract; and

(ii) Writing. The Amendment is in Writing and signed by the authorized representatives of the parties to the Contract.

~~(3) **Special Rule for Amendments of Small Procurements.**~~

~~(a) Small Procurements. A Contract awarded as a Small Procurement in accordance with C-047-0265 may be amended by a Contracting Agency, but the cumulative Unanticipated Amendments must not increase the total Contract Price to greater than $6,000. The Contract and all cumulative Unanticipated Amendments must not exceed a total amount of $6,000. The General Rule on Anticipated Amendments applies to Small Procurements.~~

~~(4) **Special Rules for Renegotiated Contracts**.~~

~~Notwithstanding the General Rule on Amendments in Section (2), a Contracting Agency may renegotiate the terms and conditions, including the Contract Price, of a Contract without any additional competitive process and amend a Contract if the Contracting Agency determines that it is in the best interest of the Contracting Agency and subject to the following conditions:~~

~~(a) A Contracting Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the Contracting Agency as the Original Contract; and~~

~~(b) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than any one of the prior Contracts.~~
~~(c) If a Contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original Solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.~~

~~-~~(c) Scope of Procurement. The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approval of the Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described the changes to be made by the amendment in the Procurement Documents, it would likely have increased competition or affected award of the Contract.

(~~b~~d) Otherwise Permitted. These Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(~~e~~e) Change in Law. The amendment is necessary to comply with a change in law that affects performance of the Contract.

(~~d~~f) Renegotiation. The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.
(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the Contract or the approval of the Special Procurement, if any after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years

~~(5) **Special Rules for Amendments of State-Funded Contracts for Architectural, Engineering and Land Surveying Services and Related Services**. Notwithstanding the General Rule on Amendments in Section (2), the Rule for Amendments of state-funded Contracts for Architectural, Engineering and Land Surveying Services and Related Services, where the contracts have been entered pursuant to state requirements under ORS 279C.110(2), are as follows:~~

~~(a) A Contracting Agency may amend any Contract for Architectural, Engineering or Land Surveying Services or Related Services if the Contracting Agency, in its sole discretion, determines that the Amendment is within the Scope of services contemplated under the Request for Proposals and that the Amendment would not materially impact the field of competition for the services described in the Request for Proposals. In making this determination, the Contracting Agency must consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the Request for Proposals if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Request for Proposals were re-issued to include the additional services.~~
~~(b) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new regulations or ordinances of federal, state or local Authorized Agencies, and these existing or new regulations or ordinances affect performance of the Original Contract and were not cited in the original Request for Proposals or Contract or were enacted or amended after issuance of the original Request for Proposals or execution of the Original Contract.~~
~~(c) Effect of Material Alteration or Delay of Project. If an Contracting Agency delays, or delays and then materially alters, a Project for which the Contracting Agency has entered a Contract, and the Contract has expired or been terminated, Contracting Agency may enter a Contract with the same Consultant to perform either the same Architectural, Engineering and Land Surveying Services and Related Services described in the Contract or Architectural, Engineering and Land Surveying Services and Related Services as amended to reflect Contracting Agency's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and the Contracting Agency makes Written findings that entering a Contract with Consultant:~~

~~(A) Will promote efficient use of public funds and resources and result in substantial cost savings;~~
~~(B) Will not encourage favoritism in the contracting process; and~~
~~(C) Will not substantially diminish competition for future Contracts with Consultants.~~

(6g) **Special Rule for Amendments of Price Agreements**. ~~Notwithstanding the General Rule on Amendments in Section (2), t~~The Contracting Agency may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;
(b) ~~As permitted by any applicable Special Rule for Amendments, Sections (3) through (10)~~If the circumstances set forth in ORS 279B.140(2) exist; or
(c) As permitted by applicable law.

(2) Small Procurements. A Contract awarded as a Small Procurement in accordance with C-047-0265 may be amended by a Contracting Agency, but the cumulative Amendments must not increase the total Contract Price to greater than $6,000. The Contract and all cumulative Amendments must not exceed a total amount of $6,000.
(3) Intermediate Procurements. A Contract awarded as an Intermediate Procurement under C-047-0270 may be amended by a Contracting Agency, but the cumulative Unanticipated amendments shall not increase the total Contract Price to a sum that is greater than $150,000 or twenty-five percent (25%) of the original Contract Price, whichever is greater.

~~(7) **Special Rule for Amendments of Cooperative Procurements.**~~
~~(a) An Administering Contracting Agency may amend an Original Contract in a manner that is substantially equivalent to this Rule.~~
~~(b) A Participating Contracting Agency may amend its own Contract resulting from a Cooperative Procurement in a manner that complies with this Rule.~~
~~(8) **Sole-Source Procurements.** The General Rule on Amendments in Section (2) applies to Sole-Source Procurements pursuant to ORS 279B.075 and C-047-0275.~~
~~(9) **Special Rule for Amendments of Contracts for Emergencies.** Notwithstanding Sections (2) through (8) of this Rule, a Contracting Agency may amend a Contract awarded as an Emergency Procurement if the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency.~~

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

CLACKAMAS COUNTY
LOCAL CONTRACT REVIEW BOARD RULES
DIVISION C-049

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

C-049-0100 Application

(1) These division C-049 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements. Model Rules that apply specifically to Public Improvement Contracts are so identified.
(2) These division C-049 rules address matters covered in ORS Chapter 279C .
(3) These division C-049 Model rules become effective on March 1, 2005 and apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0110 Policies

In addition to the general Code policies set forth in ORS 279A.015, the 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these division C-049 rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.300 & ORS 279C.305
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0120 Definitions

(1) "**Conduct Disqualification**" means a Disqualification pursuant to ORS 279C.440.

(2) "**Disqualification**" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with C-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.
(3) "**Foreign Contractor**" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See C-049-0490.
(4) "**Notice**" means any of the alternative forms of public announcement of Procurements, as described in C-049-0210.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0130 Competitive Bidding Requirement
A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on Competitive Bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see C-049-0600 to C-049-0655 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0140 Contracts for Construction Other Than Public Improvements
(1) **Procurement Under ORS Chapter 279B**. Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts may be procured and amended as general trade services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and these division 49 Rules. Emergency Contracts for construction Services that are not Public Improvement Contracts are regulated under ORS 279B.080
(2) **Application of ORS Chapter 279C**. Non-procurement provisions of ORS Chapter 279C and these division 49 Rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.320
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-049-0150 Emergency Contracts; Bidding and Bonding Exemptions
(1) **Emergency Declaration**. A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from

failure to enter into an Emergency Contract. The Emergency declaration shall be kept on file as a public record.
(2) **Competition for Emergency Contracts**. Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080. For emergency procurement of construction services that are not public improvements, the Contracting Agency shall ensure competition for an Emergency Contract as reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.
(3) **Emergency Contract Scope**. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.
(4) Emergency **Contract Modification**. Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.
(5) **Excusing Bonds**. Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the procurement but the Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.080, 279C.320 & 279C.380(4)
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0160 Intermediate Procurements; Competitive Quotes and Amendments
(1) **General**. Public Improvement Contracts estimated by the Contracting Agency not to exceed $100,000 may be Awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.
(2) **Selection Criteria**. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.
(3) **Request for Quotes**. Contracting Agencies shall utilize written requests for quotes whenever reasonably practicable. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.
(4) **Number of Quotes; Record Required**. Contracting Agencies shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a written record of the effort made to obtain those quotes.
(5) **Award**. If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting

Agency, taking into account price as well as any other applicable factors such as, but not limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a written record of the basis for Award.
(6) **Price Increases**. Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award when a Contracting Agency determines that a price increase is warranted for additional Work reasonably related to the scope of the original procurement.
(7) **Amendments**. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this Rule. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065
Stats. Implemented: Temporary provisions relating to competitive quotes were not codified but compiled as Legislative Counsel notes following ORS 279C.410.
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

FORMAL PROCUREMENT RULES; PUBLIC IMPROVEMENTS

C-049-0200 Solicitation Documents; Required Provisions; Assignment or Transfer
(1) **Solicitation Document**. Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) **General Information**;

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See C-049-0300 regarding facsimile Bids or Proposals and C-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, the Contracting Agency shall designate a time of Closing consistent with the first-

tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and C-049-0360. For timing issues relating to Addenda, see C-049-0250;
(H) The office where the Specifications for the Work may be reviewed;
(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;
(J) If the Contract resulting from a solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq.), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 3141 to 3148.";
(K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract for work as a contractor or landscape contractor unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in C-049-0230;
(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See C-049-0440(3));
(N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See C-049-0250); and
(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in C-049-0360.

(b) **Evaluation Process**:
(A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b),and may reject for good cause all Offers after finding that doing so is in the public interest;
(B) The anticipated solicitation schedule, deadlines, protest process and evaluation process, if any;
(C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and C-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;
(i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of C-049-0650; and

(c) **Contract Provisions**. The Contracting Agency shall include Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2);

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) BOLI public works bond (ORS 279C.830(2));

(P) Retainage (ORS 279C.550 to 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);

(S) Notice of claim (ORS 279C.605);

(T) [reserved]; and

(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) **Assignment or Transfer Restricted**. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under

the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.110(4), 279A.120, 279C.365, 279C.370, 279C.375, 279C.390, 279C.505 to 580, 279C.605, 305.385, 468A.720, 701.005 & 701.055
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0210 Notice and Advertising Requirements; Posting

(1) **Notice and Distribution Fee.** A Contracting Agency shall furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing Notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing Notice on the Contracting Agency's Internet Web site.

(2) **Advertising.** Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Board has exempted the solicitation from the advertisement requirement as part of a competitive Bidding exemption under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) A Contracting Agency may publish by Electronic Advertisement if the Board determines Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) The Contracting Agency shall publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of $125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;
(C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;
(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;
(E) The name, title and address of the Contracting Agency Person authorized to receive Offers;
(F) The scheduled Opening; and
(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq.).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360 & ORS 200.035
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0220 Prequalification of Offerors

(1) **Prequalification**. Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. A Contracting Agency may, by rule, resolution, ordinance or other law or regulation, require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) Permissive Prequalification. A Contracting Agency may prequalify a Person for the Contracting Agency's solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a solicitation to that list.

(2) **Prequalification Presumed**. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) **Standards for Prequalification**. A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;
(b) The Person's record of performance;
(c) The Person's record of integrity;
(d) The Person is qualified to contract with the Contracting Agency. (See, C-049-0390(2) regarding standards of responsibility.)

(4) **Notice Of Denial**. If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this

rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.430 & ORS 279C.435
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0230 Eligibility to Bid or Propose; Registration or License
(1) **Construction Contracts**. A Contracting Agency shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.
(2) **Landscape Contracts**. A Contracting Agency shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the offer is made.
(3) **Noncomplying Entities**. The Contracting Agency shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 671.530 & ORS 701.055
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0240 Pre-Offer Conferences
(1) **Purpose**. A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.
(2) **Required attendance**. The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.
(3) **Scheduled time**. If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
(4) **Statements Not Binding**. Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.
(5) **Contracting Agency Announcement**. The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with C-049-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & 279C.370
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0250 Addenda to Solicitation Documents
(1) **Issuance; Receipt**. The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda or in the Solicitation Document.
(2) **Notice and Distribution**. The Contracting Agency shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in C-049-0210(1). The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available (see, C-049-0200(1)(a)(N). For example, "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's Web site. Addenda may be downloaded off the Contracting Agency's Web site. Offerors should frequently check the Contracting Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."
(3) **Timelines; Extensions**. The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
(4) **Request for Change or Protest**. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in C-049-0260, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under C-049-0260, whichever date is later. The Contracting Agency shall consider only an Offeror's request for change or protest to the Addendum; the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Contracting Agency's receipt of request for change or protests as set forth in C-049-0260(2) and (3).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.395 & ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0260 Request for Clarification or Change; Solicitation Protests
(1) **Clarification**. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.
(2) **Request for Change**.
(a) Delivery. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing.
(b) Content of Request for Change.

(A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.
(B) An Offeror shall mark its request for change as follows:
(i) "Contract Provision Request for Change"; and
(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) **Protest.**
(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing.
(b) Content of Protest.
(A) An Offeror's Written protest shall include:
(i) A detailed statement of the legal and factual grounds for the protest;
(ii) A description of the resulting prejudice to the Offeror; and
(iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.
(B) An Offeror shall mark its protest as follows:
(i) "Contract Provision Protest"; and
(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(4) **Contracting Agency Response**. The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under C-049-0260 or cancel the solicitation under C-049-0270.

(5) **Extension of Closing**. If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.345 & ORS 279C.365
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0270 Cancellation of Solicitation Document

(1) **Cancellation in the Public Interest**. A Contracting Agency may cancel a solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the solicitation file.

(2) **Notice of Cancellation**. If the Contracting Agency cancels a solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with C-049-0210(1). Such notice of cancellation shall:
(a) Identify the solicitation;

(b) Briefly explain the reason for cancellation; and
(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Disposition of Offers**.
(a) Prior to Offer Opening. If the Contracting Agency cancels a solicitation prior to Offer Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.
(b) After Offer Opening. If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's solicitation file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.395
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0280 Offer Submissions

(1) **Offer and Acceptance**. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.
(a) In competitive Bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in C-049-0410. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.
(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. See C-049-0650 on Requests for Proposals and C-049-0290 on Bid or Proposal Security. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation.

(2) **Responsive Offer**. A Contracting Agency may Award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) **Contingent Offers**. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to C-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) **Offeror's Acknowledgement**. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under C-049-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.

(5) **Instructions**. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its

Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
(6) **Forms**. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
(7) **Documents**. An Offeror shall provide the Contracting Agency with all documents and descriptive literature required under the Solicitation Document.
(8) **Facsimile or Electronic Submissions**. If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.
(9) **Product Samples and Descriptive Literature**. A Contracting Agency may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
(10) **Identification of Offers**.
(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.
(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
(11) **Receipt of Offers**. The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & ORS 279C.375
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-049-0290 Bid or Proposal Security
(1) **Security Amount**. If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond and Payment Bond and, in the case of Proposal security, with any required proof of insurance. See ORS 279C.365(5) and 279C.385.
(2) **Requirement for Bid Security (Optional for Proposals)**. Unless a Contracting Agency has otherwise exempted a solicitation or class of solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than $100,000. Contracts for less than $100,000 are exempt pursuant to ORS 279C.390. The Contracting Agency may require Bid security even if it has exempted a class of solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs . See ORS 279C.400(5).

(3) **Form of Bid or Proposal Security**. A Contracting Agency may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) **Return of Security**. A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 279C.385 & ORS 279C.390
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0300 Facsimile Bids and Proposals

(1) **Contracting Agency Authorization**. A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency shall not authorize facsimile Offers unless the Contracting Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

(a) To receive, identify, record and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document**. In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a request for quotes) the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine.";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer. ";

(e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:
(A) Telephone number; and
(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and
(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
(A) Receipt of garbled or incomplete documents;
(B) Availability or condition of the receiving facsimile machine;
(C) Incompatibility between the sending and receiving facsimile machine;
(D) Delay in transmission or receipt of documents;
(E) Failure of the Offeror to properly identify the Offer documents;
(F) Illegibility of Offer documents; and
(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0310 Electronic Procurement
(1) **General**. Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of $125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).
(2) **Alternative Procedures**. In the event that a Contracting Agency desires to allow Electronic Offers for a Public Improvement Contract, it shall first promulgate supporting procedures substantially in conformance with C-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.
(3) **Interpretation**. Nothing in this rule shall be construed as prohibiting Contracting Agencies from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy. See ORS 279C.365(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-049-0320 Pre-Closing Modification or Withdrawal of Offers
(1) **Modifications**. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with C-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:
(a) Bid (or Proposal) Modification; and
(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) **Withdrawals**.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation**. The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate solicitation file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360(2), 279C.365, 279C.375 & 279C.395
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0330 Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) **Receipt**. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording**. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to C-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) **Availability**. After Opening, the Contracting Agency shall make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0340 Late Bids, Late Withdrawals and Late Modifications
Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. A Contracting Agency shall not consider late Offers, withdrawals or modifications except as permitted in C-049-0350 or C-049-0390.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0350 Mistakes
(1) **Generally**. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.
(2) **Contracting Agency Treatment of Mistakes**. A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes**. The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award**. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division C-049 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375 & ORS 279C.395
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0360 First-Tier Subcontractors; Disclosure and Substitution

(1) **Required Disclosure**. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed $100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least $15,000; or
(b) $350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline and Bid Opening**. For each ITB to which this rule applies, the Contracting Agency shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) **Bidder Instructions and Disclosure Form**. For the purposes of this rule, a Contracting Agency in its solicitation shall prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2).

(4) **Submission**. A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness**. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) **Substitution**. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.370, 279C.585, 279C.590 & 279C.835
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0370 Disqualification of Persons

(1) **Authority**. A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against minority, women or emerging small business enterprises in awarding a subcontract under a contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify**. The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
(d) Include a statement of the authority and jurisdiction under which the hearing will be held;
(e) Include a reference to the particular sections of the statutes and rules involved;
(f) State the proposed Disqualification period; and
(g) State that the Person may be represented by legal counsel.

(3) **Hearing**. The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely request. The Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(4) **Notice of Disqualification**. The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
(a) The effective date and period of Disqualification;
(b) The grounds for Disqualification; and
(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.065, 200.075, 279C.440, 279C.445, 279C.450 & 279A.110
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0380 Bid or Proposal Evaluation Criteria

(1) **General**. A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See C-049-0390, and Rules for Alternative Contracting Methods at C-049-0600 to C-049-0690.

(2) **Bid Evaluation Criteria**. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.
(a) Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.
(b) Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of

mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See C-049-0350(2)(b).

(3) **Proposal Evaluation Criteria**. If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive Bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(3), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See C-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0390 Offer Evaluation and Award; Determination of Responsibility

(1) **General**. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375(3)(a). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. ORS 279C.375(5) permits multiple contract awards when specified in the Solicitation Documents.

(2) **Determination of Responsibility**. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;

(b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the

Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under C-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract.The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is legally qualified to contract with the Contracting Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Contracting Agency Evaluation**. The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(4) **Offeror Submissions.**

(a) The Contracting Agency may require an Offeror to submit Product Samples, descriptive literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(5) **Evaluation of Bids**. The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with C-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(6) **Evaluation of Proposals**. See C-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.325, 279C.335, 279C.365, 279C.375 & 279C.395

[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0395 Notice of Intent to Award

(1) **Notice**. At least seven days before the Award of a Public Improvement Contract, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under $5,000) or intermediate (informal competitive quotes) Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d).

(2) **Form and Manner of Posting**. The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.

(3) **Finalizing Award**. The Contracting Agency's Award shall not be final until the later of the following:

(a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

(4) **Prior Notice Impractical**. Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375
[Adopted by Order No.2008-08, enacted 1/31/08]

C-049-0400 Documentation of Award; Availability of Award Decisions

(1) **Basis of Award**. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's solicitation file.

(2) **Contents of Award Record for Bids**. The Contracting Agency's record shall include:

(a) All submitted Bids;

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) **Contents of Award Record for Proposals**. Where the use of Requests for Proposals is authorized as set forth in C-049-0650, the Contracting Agency's record shall include:

(a) All submitted Proposals.

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the Contracting Agency permitted negotiations in accordance with C-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.

(4) **Contract Document**. The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) **Bid Tabulations and Award Summaries**. Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals. A nominal charge may be payable in advance. Requests must contain the Solicitation title and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.
(6) **Availability of Solicitation Files**. The Contracting Agency shall make completed solicitation files available for public review at the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & ORS 279C.375
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0410 Time for Contracting Agency Acceptance; Extension
(1) **Time for Offer Acceptance**. An Offeror's Bid, or Proposal submitted as a Firm Offer (see C-049-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.
(2) **Extension of Acceptance Time.** A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0420 Negotiation With Bidders Prohibited
Except as permitted by ORS 279C.340 and C-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with C-049-0910.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.340 & ORS 279C.375
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0430 Negotiation When Bids Exceed Cost Estimate
(1) **Generally**. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of C-049-0360 do not apply to negotiations under this rule.
(2) **Definitions**. The following definitions apply to this administrative rule:
(a) "**Cost** Estimate" means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an

architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.
(b) "**Other Options**" means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in C-049-0650, but excluding any material requirements previously announced in the solicitation process that would likely affect the field of competition.
(c) "**Project**" means a Public Improvement.
(d) "**Value** Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) **Rejection of Bids**. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.

(4) **Scope of Negotiations**. Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the Bidding process had the change been made during the solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.

(5) **Discontinuing Negotiations**. The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(6) **Limitation**. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) **Public Records**. To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & ORS 279A.065
Stats. Implemented: ORS 279C.340
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0440 Rejection of Offers

(1) **Rejection of an Offer**.

(a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.
(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:
(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
(B) Takes exception to terms and conditions (including Specifications);
(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
(D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;
(E) Is late;
(F) Is not in substantial compliance with the Solicitation Documents;
(G) Is not in substantial compliance with all prescribed public solicitation procedures.
(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:
(A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;
(B) Has been Disqualified;
(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;
(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
(G) Has failed to provide the certification required under section 3 of this rule;
(H) Is not Responsible. See C-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.
(2) **Form of Business**. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and C-049-0370.
(3) **Certification of Non-Discrimination**. The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.
(4) **Rejection of all Offers**. A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause finding.
(5) **Criteria for Rejection of All Offers**. The Contracting Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract;
(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the solicitation process or Solicitation Document;
(e) The Contracting Agency cancels the solicitation in accordance with C-049-0270; or
(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, 279C.380, 279C.395, 279A.105 & 279A.110
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0450 Protest of Contractor Selection, Contract Award
(1) **Purpose**. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision.
(2) **Notice of Competitive Range**. Unless otherwise provided in the RFP, when the competitive proposal process is authorized under C-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:
(a) 10 Days after the date of the notice, unless otherwise provided therein; or
(b) Until the Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.
(3) **Notice of Intent to Award**. Unless otherwise provided in the Solicitation Document, the Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract. The Contracting Agency's Award shall not be final until the later of the following:
(a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
(b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.
(4) **Right to Protest Award**.
(a) An adversely affected or aggrieved Offeror may submit to the Contracting Agency a Written protest of the Contracting Agency's intent to Award within seven Days after issuance of the notice of intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.
(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were nonresponsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document.

(5) **Right to Protest Competitive Range**.

(a) An adversely affected or aggrieved Proposer may submit to the Purchasing Manager a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at C-049-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests**. The Purchasing Manager has authority to settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision of Purchasing Manager**. If a protest is not settled, the Purchasing Manager shall promptly issue a Written decision on the protest.

(8) **Appeal to County Administrator**. An adversely affected or aggrieved Proposer may appeal the Purchasing Manager's decision on its protest to the County Administrator within seven days after issuance of the decision of the Purchasing Manager. The appeal must be in writing and must specify the grounds upon which the appeal is based. The County Administrator shall not consider an appeal submitted after the time period established in this Rule.

(9) **Authority to Resolve Appeals**. The County Administrator has authority to settle or resolve a Written appeal submitted in accordance with the requirements of this Rule.
(10) **Decision of County Administrator**. If an appeal is not settled, the County Administrator shall issue a Written decision on the appeal. Judicial review of this decision will be available if provided by statute.
(11) **Award**. The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, 279C.380, 279C.385 & 279C.460
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0460 Performance and Payment Security; Waiver
(1) **Public Improvement Contracts**. Contractors shall execute and deliver to the Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts in excess of $50,000, unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the Board exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390.
(2) **Other Construction Contracts**. A Contracting Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.
(3) **Requirement for Surety Bond**. The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full contract price.
(4) **Time for Submission**. The apparent successful Offeror must promptly furnish the required performance security and payment security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, ORS 279C.380 & ORS 279C.390
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

C-049-0470 Substitute Contractor
If the Contractor provided a performance bond, the Contracting Agency may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not

involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.370, 279C.375, 279C.380 & 279C.390
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0490 Foreign Contractor
If the Contract Price exceeds $10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the Contracting Agency. The Contracting Agency Awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.120
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0600 Alternative Contracting Methods
Contracting Agencies may use Alternative Contracting Methods for Public Improvement Contracts by using exemptions granted pursuant to ORS 279C.335 and competitive proposals under ORS 279C.400. Those methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting.

Stat. Auth.: ORS 279C.335, 279A.065 & 351.086
Stats. Implemented: ORS 279C.335, 279A.065 & 351.086
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0610 Definitions for Alternative Contracting Methods
The following definitions shall apply to C-049-0600:
(1) **Alternative Contracting Methods** means innovative Procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting.
(2) **Construction Manager/General Contractor (or "CM/GC")** means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the Contracting Agency under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a

member of the project team along with the Contracting Agency, architect/engineers and other consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."
(3) **Design-Build** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the services necessary to both design and construct the project.
(4) **Energy Savings Performance Contract (or "ESPC")** means a Public Improvement Contract between a Contracting Agency and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.
(5) **Guaranteed Maximum Price (or "GMP")** means the total maximum price provided to the Contracting Agency by the Contractor, and accepted by the Contracting Agency, that includes all reimbursable costs of and fees for completion of the Contract Work, as defined by the Public Improvement Contract, except for material changes in the scope of Work. It may also include particularly identified contingency amounts.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 & ORS 279A.065
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0620 Use of Alternative Contracting Methods
(1) **Competitive Bidding Exemptions**. ORS Chapter 279C requires a competitive Bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Contracting Agency rules. Use of Alternative Contracting Methods may be directed by the Board as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code.
(2) **Post-Project Evaluation**. ORS 279C.355 requires that the Contracting Agency prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 for which the competitive Bidding process was not used.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.355 & 351.086
[Adopted by Order NO. 2005-34, enacted 2-24-05]

137-049-0645 Requests for Qualifications (RFQ)
As provided by ORS 279C.405(1), Contracting Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, Contracting Agencies shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the firms selected in the RFQ process. In such cases the Contracting Agencies shall also provide within the RFQ a protest provision substantially in the form of C-049-

0450(5) regarding protests of the Competitive Range. Thereafter, contracting agencies may distribute RFPs to the selected firms without further advertisement of the solicitation.

Stat. Auth.: ORS 279C.405, 279A.065
Stats. Implemented: ORS 279C.405
[Adopted by Board Order 2010-21, enacted 3/18/10]

C-049-0650 Requests for Proposals (RFP)

(1) **Generally**. The use of competitive proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335(1), OAR 137-049-0130 and 137-049-0600 to 137-049-0690. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals.

(2) **Solicitation Documents**. In addition to the Solicitation Document requirements of OAR 137-049-0200, this rule applies to the requirements for Requests for Proposals for a Public Improvement. RFP Solicitation Documents shall conform to the following standards:

(a) The Contracting Agency shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the Contracting Agency;

(b) When the Contracting Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the Contracting Agency must authorize Offerors to propose alternative terms and conditions. The Contracting Agency must describe the evaluation and discussion or negotiation process, including how the Contracting Agency will establish a Competitive Range (if any);

(c) If the Contracting Agency intends to Award Contracts to more than one Proposer, the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(3) **Evaluation of Proposals**.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(b) After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency will establish the highest ranked Proposer or establish a Competitive Range.

(4) **Notice.** Unless otherwise provided in the Solicitation Document, the Contracting Agency shall provide Written notice to all Offerors of the County's intent to award a Contract, or establishment of a Competitive Range.

(5) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers, the Contracting Agency shall proceed as follows:

(a) General Discussions. The Contracting Agency shall initiate oral or Written discussions with Proposers. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Competitive Range Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the Solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The Contracting Agency shall provide Written notice to all Proposers in the Competitive Range of the Contracting Agency's intent to Award the Contract. An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with C-049-0450. After the protest period provided in accordance with that rule expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations.

(6) **Negotiation**.

(a) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(A) Statement of Work; and

(B) Contract Price as it is affected by negotiating the statement of Work.

(C) The process for discussions or negotiations that is outlined and explained in subsections (5), (6)(b) and (6)(c) of this rule does not apply to this limited negotiation.

(b) Initiating Competitive Range Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(c) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to the Request for Proposals. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to the Request for Proposals.

(7) **Terminating Negotiations**. At any time during discussions or negotiations that the Contracting Agency conducts in accordance with this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(8) **Continuing Negotiations**. If the Contracting Agency terminates discussions or negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer, and continue the process described in this rule until the Contracting Agency has either:

(a) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(b) Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals.

(9) **Discretionary Negotiations.** If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations.

(10) **Negotiation Team.** If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency shall establish a negotiation team tailored for the acquisition. The Contracting Agency's team may include legal, technical and negotiating personnel.

(11) **Cancellation.** Nothing in this rule shall restrict or prohibit the Contracting Agency from canceling the solicitation at any time.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.400 - 279C.410
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0655 Methods of Contractor Selection Authorized

Methods of Contractor selection, including but not limited to award based solely on the ranking of proposals, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or any combination of methods, are authorized when such methods and the procedures to be followed are described in a Request for Proposals.

Stat. Auth.: ORS 279A.065
Stat. Implemented: ORS 279C.410(5), ORS 279C.405(2)
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0820 Retainage

(1) **Withholding of Retainage.** Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.
(3) Deposit in interest-bearing accounts. Upon request of the Contractor, a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Contracting Agency. Earnings on such account shall accrue to the Contractor. State Contracting Agencies shall establish the account through the State Treasurer.
(4) **Alternatives to cash retainage**. In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:
(a) Deposit of bonds, securities, or other intruments:
(A) The Contractor may deposit bonds, securities, or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.
(B) Bonds, securities, or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:
(i) Bills, certificates, notes or bonds of the United States.
(ii) Other obligations of the United States or agencies of the United States.
(iii) Obligations of a corporation wholly owned by the Federal Government.
(iv) Indebtedness of the Federal National Mortgage Association.
(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.
(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.
(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.
(5) **Recovery of costs**. A Contracting Agency may recover from the Contractor all costs incurred in the proper handling of retainage by reduction of the final payment.
(6) **Additional Retainage When Certified Payroll Statements Not Filed**. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0860 Public Works Contracts
(1) **Generally**. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.
(2) **Required Contract Conditions**. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).
(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).
(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).
(3) **Requirements for Specifications**. The Specifications for every Public Works Contract, consisting of the procurement package (such as the Project Manual, Bid or Proposal Booklets, Request for Quotes or similar procurement Specifications), must contain the following provisions:
(a) The prevailing rate of wage, as required by ORS 279C.830(1)(a): (i) physically contained within or attached to hard copies of procurement Specifications:(ii) included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or, (iii) when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If applicable, the federal prevailing rate of wage and information concerning whether the state or federal rate is higher in each trade or occupation in each locality, as determined by BOLI in a separate publication. The same options for inclusion of wage rate information stated in subsection 3(a) of this rule apply. See BOLI rules at OAR 839-025-0020 and 0035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.800 - ORS 279C.870
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08; amended by Order No. 2010-21, enacted 3/18/10.]

C-049-0870 Specifications; Brand Name Products
(1) **Generally**. The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).
(2) **Equivalents**. A Contracting Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.345
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0900 Contract Suspension; Termination Procedures

(1) **Suspension of Work.** In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency.** A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative.** The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.650, 279C.326, 279C.655, 279C.660, 279C.665 & 279C.670
[Adopted by Order NO. 2005-34, enacted 2-24-05]

C-049-0910 Contract Amendments on Public Improvements

(1) "**Amendment**" as used in this rule means a Written modification to the terms and conditions of a Public Improvement Contract which is reasonably related to the scope of the original Procurement and requires mutual agreement between the Contracting Agency and the Contractor.

(2) **Contract Amendments.** Contract Amendments are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably related to the scope of the

original procurement. Amendments to a Public Improvement Contract may be made only when they are reasonably related to the scope of the original Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279C.400(1)
[Adopted by Order NO. 2005-34, enacted 2-24-05; Amended by Order No. 2008-08, enacted 1/31/08]

DIVISION C-050

AUTHORITY TO SIGN CONTRACTS

C-050-0100 Delegation of Authority to sign Contracts and Amendments
(1) **Application.** The Board has authority to sign all Contracts and Contract amendments for the Contracting Agency. The purpose of these division C-050 rules is to establish a limited delegation of that authority to sign Contracts and Contract amendments. In other words, these rules identify the persons other than the Board who have the authority to sign Contracts and Contract amendments for the Contracting Agency. They do not address the type of procurement process that is to be followed, such as Invitation to Bid, Request for Proposals, or other procurement process.

(2) **Authority to Sign Contracts and Contract Amendments.**
(a) Officers and employees of Clackamas County holding the positions listed in this subsection have the authority to sign Contracts with a value not to exceed a total of $150,000 in the aggregate for any one project or for any one contractor in a single fiscal year.
(b) The listed persons also have authority to sign Contract amendments, if the amendment does not exceed 10% of the original Contract amount or $150,000, whichever is less.

Assessor
Business and Community Services Director
Business and Community Services Deputy Director
C-Com Director
County Clerk
Community and Legislative Affairs Director
Community Corrections Director
Community Development Director
County Administrator
County Counsel
Deputy County Administrator
District Attorney
District Attorney Office Administrator (Administrative Services Manager)
Emergency Management Director
Employee Services Director
Family Court Services Director
Finance Director
Homeland Security Director
Health, Housing and Human Services Director

Health, Housing and Human Services ~~Deputy Director~~Assistant Director of Operations
~~Information~~ Technology Services Director
Technology Services Deputy Director
Justice of the Peace
Juvenile Department Director
Law Library Librarian
Library Director
Public and Government Relations Director
Purchasing Manager
Sheriff
Tourism and Development Council Executive Director
Transportation and Development Director
Transportation and Development Deputy Director
Transportation and Development Business Services Manager
Treasurer
Undersheriff
Water Environment Services Director

(3) **District Attorney's, Sheriff's, Treasurer's, Assessor's County Clerk's and Justice of the Peace's Additional Authority**. In addition to the authority granted above in subsection (2), the District Attorney, the Sheriff, the Treasurer, the Assessor the County Clerk and the Justice of the Peace have the authority to sign Contract amendments, for contracts other than Public Improvement contracts, which do not exceed 10% of the original contract amount, or $150,000, whichever is greater.

(4) **DTD Director's and WES Director's Additional Authority**. In addition to the authority granted above in subsection (2), the Transportation and Development Director, and the Water and Environment Services Director, have the authority to sign Contract amendments, for Public Improvement contracts, which do not exceed 10% of the original contract amount, or $150,000, whichever is greater.

(5) **County Administrator's Additional Authority**. In addition to the authority granted above in subsection (2), the County Administrator has the authority to sign Contract amendments for both Public Improvement contracts and other contracts, which do not exceed 10% of the original contract amount, or $150,000, whichever is greater.

(6) **Authority Exclusive**. The delegations of authority set forth in this section are exclusive, and no other persons have authority to perform such functions without express written authority from the Board granted after the adoption of this section. All previous delegations of authority adopted by the Board are hereby repealed. The County Administrator has other authority granted in Chapters 2.05 and 2.09 of the County Code, such as the authority to sign employment contracts.

(7) **Other Limits**. The authority granted in this section to sign Contract amendments does not override the limits on Contract amendments for Contracts awarded as small Procurements under C-047-0265 or intermediate Procurements under C-047-0270. Amendments to small Procurements shall not increase the Contract Price to greater than

$6,000. Amendments to intermediate Procurements shall not exceed 25% of the original Contract Price or $25,000, whichever is greater.
[Adopted by Order NO. 2005-34, enacted 2-24-05; amended by Order No. 2006-366, enacted 8-24-06; Amended by Order No. 2008-08, enacted 1/31/08; Amended by Order No. 2008-165, enacted 10/16/08; Amended by Order No. 2009-84, enacted 7/9/09; amended by Order No. 2010-21, enacted 3/18/10.]

C-050-0200 Avoidance of Delay Costs

(1) The County Administrator has the authority to sign amendments to Public Improvement Contracts, for contract amounts exceeding those set forth in C-050-0100, under the following conditions:

(a) The amendment modifies bid items that have been defined under the original Contract, or addresses Differing Site Conditions, and

(b) The time needed to seek approval from the Board may result in delay costs or claims payable to the contractor.

(2) A report shall be provided to the members of the Board following every use of the authority. The amendment shall be placed before the Board for review at the earliest opportunity. The authority granted in this section is in addition to the authority granted in Rule C-050-0100.
[Adopted by Order NO. 2005-34, enacted 2-24-05]

4

WATER ENVIRONMENT SERVICES

Beyond clean water.

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

June 7, 2012

Board of County Commissioners
Clackamas County
Sitting as the Governing Body of
The Tri-City Service District

Members of the Board:

A FIRST READING OF AN ORDINANCE AMENDING
CERTAIN SECTIONS OF THE ORDINANCE OF THE
TRI-CITY SERVICE DISTRICT RELATING TO INDUSTRIAL PRETREATMENT

The Tri-City Service District ("District") provides wholesale wastewater treatment services to the cities of Gladstone, Oregon City and West Linn pursuant to a Clean Water Act permit issued by the Environmental Protection Agency and their delegee the Oregon Department of Environmental Quality ("DEQ"). The District's permit had been administratively extended for over a decade and the District's ordinances were kept consistent with the then-active permit.

Last year the District's permit was reviewed and reissued with certain new conditions, including a requirement that the District's ordinances be updated to match current Clean Water Act provisions and related regulations. The primary area of impact relates to industrial pretreatment ("IPT") standards. IPT applies when a business is such a significant contributor of wastewater to the system, either by volume or loading, that they are required to conduct some level of treatment at the business site prior to entry into the conveyance system. An example of this would be a factory or dairy processor. Staff has worked with DEQ and received sign-off that the proposed amendments are consistent with current requirements. The overall impact of the amendments would be to add flexibility in considering the manner in which the District can have businesses comply with industrial pretreatment requirements, and incorporating the concept of "best management practices" adaptability into IPT.

The proposed amendments are mandatory and failure to adopt them could result in the District being fined by DEQ for permit noncompliance. Attached is a memorandum that summarized the proposed changes and their impact. This ordinance has been reviewed and approved by County Counsel.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioner sitting as the Tri-City Service District Board read the proposed Ordinance by title only and hold a second reading on June 14, 2012.

Sincerely,

Michael S. Kuenzi
Director, Water Environment Services

For information on this issue or copies of attachments please contact Chris Storey at 503.742.4623

June 7, 2012

TO: Board of County Commissioners
District Administrator Steve Wheeler

FROM: Chris Storey, Assistant County Counsel

Below is a summary of TCSD Ordinance changes ordered by DEQ regarding the industrial pretreatment program and proposed for adoption:

- *Two new definitions are to be added, with related updated numbering for the remaining definitions. They are:*

2.1.4 Best Management Practices or BMPs. Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

2.1.44 Local Limits. Specific discharge limits developed and enforced by the District upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

- *Added in 2.4 Abbreviations to match the definitions:*

BMP Best Management Practices

- *A paragraph allowing BMPs for industrial pretreatment, to give more flexibility in implementation:*

Section 3.2.4 Local Limits Development

The District is authorized to establish Local Limits pursuant to 40 CFR 403.5 to implement the prohibitions listed in Sections 3.1.2 and 3.2.3. The District may also develop Best Management Practices, by ordinance or in individual wastewater discharge permits, to implement Local Limits and the requirements of Sections 3.1.2 and 3.2.3.

- *Two new provisions to be added to a current list regarding implementation of industrial pretreatment, including a plan for mishaps and ensuring future owners are aware of the requirements:*

Section 4.2.5:

(l) Requirements for a Slug Control Plan, notification to the District of slug discharges and changes at the Industrial User's facility affecting potential for a slug discharge;

(q) Statement of non-transferability without, at a minimum, prior notification to the District and a provision of a copy of the existing permit to the new owner or operator.

- *Adds language allowing a business to reduce the level of required testing if certain other conditions are met:*

Section 4.4.3:

The District may authorize an Industrial Discharger subject to a Categorical Pretreatment Standard to forego sampling of a pollutant regulated by a Categorical Pretreatment Standard if the Industrial Discharger has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial Discharger. This authorization is subject to the conditions outlined in 40 CFR 403.12(e)(2)(i-vii).

- *Language to be deleted to remove extra testing requirements:*

Section 4.5.2 Sampling:

~~Samples that are taken by the District for the purposes of determining compliance with the requirements of this Ordinance shall be split with the Discharger (or a duplicate sample provided in the instance of fats, oils, and greases) if requested before or at the time of sampling.~~

- *Changes reporting timeline to match current Clean Water Act requirements:*

Section 0.7 Change In Permitted Discharge:

It shall be the responsibility of every Industrial User to ~~promptly~~ immediately report to the District...

- *Adds two paragraphs in Section 11.5.1 Base Penalty Matrix regarding penalty calculation to match current Clean Water Act requirements and make clear the standards that are used:*

The magnitude of the violation is major if the District finds that the violation had a significant adverse impact on human health or the environment. In making this finding, the District will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and District rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the District may consider any single factor to be conclusive.

The magnitude of the violation is minor if the District finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or other environmental receptors. In making this finding, the District will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission and District rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the District may consider any single factor to be conclusive.

An Ordinance Amending
Certain Sections of the Ordinances of the
Tri-City Service District relating to Industrial Pretreatment

WHEREAS, the Tri-City Service District ("District") provides wholesale wastewater treatment services for the Cities of Gladstone, Oregon City, and West Linn; and

WHEREAS, the District has received a new National Pollution Discharge Elimination Permit under the Clean Water Act ("Permit") for operation of the Tri-City Plant; and

WHEREAS, the Permit requires implementation of certain federal and state environmental regulations and guidance regarding industrial pretreatment operations; and

WHEREAS, the Board of County Commissioners ("Board"), acting as the governing body of the District, is desirous of bringing District ordinances into compliance with the requirements of the Clean Water Act;

NOW, THEREFORE, the Board hereby adopts this ordinance of the District:

The following provisions are added, amended, or deleted as indicated into the ordinances of the District, and impacted provisions are renumbered as required for clarity:

Added:

- Section 2.1 Definitions:

2.1.4 Best Management Practices or BMPs. Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

2.1.44 Local Limits. Specific discharge limits developed and enforced by the District upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

- Section 2.4 Abbreviations:

BMP	Best Management Practices

- Section 3.2.4 Local Limits Development

The District is authorized to establish Local Limits pursuant to 40 CFR 403.5 to implement the prohibitions listed in Sections 3.1.2 and 3.2.3. The District may also

develop Best Management Practices, by ordinance or in individual wastewater discharge permits, to implement Local Limits and the requirements of Sections 3.1.2 and 3.2.3.

- Section 4.2.5:

(l) Requirements for a Slug Control Plan, notification to the District of slug discharges and changes at the Industrial User's facility affecting potential for a slug discharge;
(q) Statement of non-transferability without, at a minimum, prior notification to the District and a provision of a copy of the existing permit to the new owner or operator.

- Section 4.4.3:

The District may authorize an Industrial Discharger subject to a Categorical Pretreatment Standard to forego sampling of a pollutant regulated by a Categorical Pretreatment Standard if the Industrial Discharger has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial Discharger. This authorization is subject to the conditions outlined in 40 CFR 403.12(e)(2)(i-vii).

- Section 11.5.1 Base Penalty Matrix:

The magnitude of the violation is major if the District finds that the violation had a significant adverse impact on human health or the environment. In making this finding, the District will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and District rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the District may consider any single factor to be conclusive.

The magnitude of the violation is minor if the District finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or other environmental receptors. In making this finding, the District will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission and District rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the District may consider any single factor to be conclusive.

Amended:

- 0.7 CHANGE IN PERMITTED DISCHARGE

It shall be the responsibility of every Industrial User to ~~promptly~~ immediately report to the District...

Deleted:

Section 4.5.2 Sampling:
~~Samples that are taken by the District for the purposes of determining compliance with the requirements of this Ordinance shall be split with the Discharger (or a duplicate sample provided in the instance of fats, oils, and greases) if requested before or at the time of sampling.~~

DATED this_____day of June 2012

BOARD OF COUNTY COMMISSIONERS AS THE GOVERNING BODY OF THE TRI-CITY SERVICE DISTRICT

_____

Chair

_____

Recording Secretary

Health, Housing & Human Services
CLACKAMAS COUNTY

Cindy Becker, *Director*

COPY

June 7, 2012

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with Family Stepping Stones for Therapeutic Early Childhood and Development Program Services

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of an Agency Service Contract with Family Stepping Stones for therapeutic early childhood and development services. Services to be provided under this contract include home visiting, parent education and support services to high risk children and their parents.

Total amount of this agreement is $197,719. Funds are budgeted in the Relief Nursery grant stream for fiscal year 2012-2013 to cover this agreement. $35,000 of this contract is funded by County General Funds. This agreement is effective upon acceptance by all parties and will terminate June 30, 2013. This contract is in the format approved by County Counsel as part of the H3S contract standardization project.

Recommendation:

We recommend the approval of this contract and that Cindy Becker be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

Cindy Becker
Director

For information on this issue or copies of attachments
Please contact Deanna Mulder at (503) 650-5675
Phone: (503) 650-5697 • Fax: (503) 655-8677 www.clackamas.us

6

Health, Housing
& Human Services
CLACKAMAS COUNTY

COPY

Cindy Becker
Director

June 7, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

Board Order # _____ Approval of Mental Health Director's
Designees to Authorize a Custody Hold Under ORS 426.233

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of the Designation of Wendy Robinson, LCSW, Johannah Keeley, MSW, Elizabeth Miller, MSW, Trina Walker, BSN, RN, Royce Bowlin, MS, Mica Richards, MS, G. Paul Kolba, MA by the Clackamas County Behavioral Health Director as additional designees authorized under ORS 426.233 (copy attached) to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division.

Recommendation

Staff recommends the Board approve the attached Board Order of Wendy Robinson, LCSW, Johannah Keeley, MSW, Elizabeth Miller, MSW, Trina Walker, BSN, RN, Royce Bowlin, MS, Mica Richards, MS, G. Paul Kolba, MA, as additional qualified mental health professionals authorized to direct a peace officer to take a person into custody under ORS 426.233.

Respectfully submitted,

Cindy Becker
Director

For more information on this issue or copies of attachments,
please contact Teri Beemer at 503 655-8356

7

CLACKAMAS COUNTY

Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

June 7, 2012

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment to Intergovernmental Agreement with Metro
to provide funds for staff time to plan and implement organics collection

Through our agreements with METRO and local cities, the County provides outreach and education, as well as program development for solid waste and waste reduction activities throughout the County. The County received funds in 2010 through an IGA with Metro for infrastructure expenses for organics (food scrap) collection from commercial generators.

Commercial businesses have requested food waste collection programs in increasing numbers and franchised collection companies have begun to offer this service in several of the cities. The infrastructure funds are being utilized to assist the business community and the collection companies with proper containers.

METRO has additional funds available this fiscal year specifically for staff time to plan and implement the collection programs. Metro has offered the County $20,000 for this effort. Additional funds may be available in the next fiscal year to broaden the program geographically.

County Counsel has reviewed and approved the Intergovernmental Agreement.

RECOMMENDATION

Staff respectfully recommends to the Board of County Commissioners approval of this amendment to our Intergovernmental Agreement with METRO.

Sincerely,

Susan Ziolko

Susan Ziolko
Office of Sustainability

For information on this issue or copies of attachments please contact Rick Winterhalter at (503) 742-4466

Metro
600 NE Grand Ave.
Portland, OR 97232-2736
503- 797-1700

Amendment

AMENDMENT NO. 1

CONTRACT NO. 929908

This Amendment hereby amends the above titled contract between Metro, a metropolitan service district organized under the law of the State of Oregon and the Metro Charter, and Clackamas County, hereinafter referred to as "County."

This amendment is a change order to the original Scope of Work as follows:

Term: Agreement is effective upon last signature and shall remain in effect until June 30, 2013.

County shall:

1. Hire an additional 1.0 FTE for four months in the Office of Sustainability, allowing 1.0 FTE (new and/or current staff) to be dedicated to planning and implementation of a commercial organics collection system in Clackamas County and its cities.
2. In coordination with other Recycle at Work staff and franchisees, develop an implementation plan and outreach strategy in order to achieve the greatest diversion of food scraps possible through a commercial food scrap collection program.
3. Assist with the development of a rate structure proposal for a food scrap collection program.
4. Conduct activities related to initial rollout and implementation of food scrap collection services which shall include participant recruitment activities and direct technical assistance to participating businesses.
5. Implementation activities will include development of outreach/educational materials and coordination with Clackamas franchisees, transfer or reload operators, and processors.
6. Conduct monitoring and evaluation activities related to commercial food scrap collection and implementation.
7. Participate in regional planning for food scrap collection.
8. Return funding to Metro by June 30, 2013 if, in the sole opinion of Metro, County has not adequately demonstrated progress in the development and implementation of food scrap collection program.

Metro shall pay County for services performed and materials delivered under this amendment in one lump sum upon execution of this agreement in the amount not to exceed TWENTY THOUSAND AND NO/100THS DOLLARS ($20,000.00), for a total contract amount not to exceed FORTY-FIVE THOUSAND AND NO/100THS DOLLARS ($45,000.00).

Except for the above, all other conditions and covenants remain in full force and effect.

IN WITNESS TO THE ABOVE, the following duly authorized representatives of the parties referenced have executed this Amendment.

CLACKAMAS COUNTY	METRO
By_____	By_____
Print Name_____	Print Name_____
Date_____	Date_____

8

CLACKAMAS COUNTY

CAMPBELL M. GILMOUR
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with K&E Excavating, Inc for the
Bear Creek (Barnards Road) Culvert Replacement Project

The Bear Creek (Barnards Road) Culvert was irreparably damaged during a January 2012 rain event. The force of the water collapsed the culvert, which in turn caused the creek to overtop the road, scouring away material that had supported both the road bed and the culvert. The collapse required closing the road and the immediate removal of the existing culvert to avoid damaging surrounding properties and minimizing additional damage to the existing roadway.

The reconstruction will consist of replacing the culvert with an aluminum multi-plate arch culvert. The new culvert will be sized approximately one foot larger in diameter than the damaged culvert at 13' 11" wide by 9' 5" high. The larger sized culvert will meet current fish passage requirements and the aluminum construction will resist corrosion from the slightly acidic surrounding soils. Reimbursement from the Federal Highway Administration will be sought for this emergency repair work.

Staff advertised the Bear Creek (Barnards Road) Culvert Project for competitive bids. The lowest responsive and responsible bidder was K&E Excavating, Inc. with a bid of $233,767.48. The project is expected to begin at contract signing and be substantially complete by July 16, 2012. The contract will be complete December 31, 2013 to allow for plant establishment. This project is funded by the County Road Fund.

The contract has been reviewed and approved by County Counsel.

Recommendation

Staff respectfully recommends that the Board approves and signs the contract with K&E Excavating, Inc. for the Bear Creek (Barnards Road) Culvert Replacement Project.

Sincerely,

Mike Bezner, PE
Transportation Engineering Manager

Placed on the June 7, 2012 agenda by the Purchasing Division.

For information on this issue or copies of attachments
please contact Joel Howie at (503) 742-4658

CLACKAMAS
COUNTY

LANE MILLER
MANAGER

PURCHASING DIVISION

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

June 7, 2012

MEMORANDUM TO THE BOARD OF COUNTY COMMISSIONERS

Please place on the Board Agenda of **June 7, 2012** this contract with K&E Excavating, Inc. for the construction of the **Bear Creek (Barnards Road) Culvert Replacement Project** for the Clackamas County DTD Engineering Division. This project was requested by Joel Howie, Project Manager. Bids were requested for all the materials and manpower necessary to complete specified work on the above-mentioned project. This project was advertised in accordance with ORS and LCRB Rules. Twelve bids were received: K&E Excavating - $233,767.48; North Santiam Paving - $262,400.00; Jeff Kersey Construction - $266,477.28; Thompson Bros Excavating - $266,648.00; Elk Mountain - $277,177.00; Anderson Environmental Contracting - $280,407.13; Banzer Construction - $287,036.00; M.L.Houck Construction - $292,764.00; CivilWorks NW - $296,366.00; Nutter Corporation - $305,851.22; Jim Smith Excavating - $311,525.00; and 3 Kings Environmental - $386,516.00. After review of all bids, K&E Excavating, Inc. was determined to be the lowest responsive and responsible bidder. The total contract amount is not to exceed $233,767.48. All work is to be substantially completed by July 16, 2012 with a contract completion date of December 31, 2013. This contract has been reviewed and approved by County Counsel. Funds for this project are covered under budget line 215-2410-00-437925-22210 for fiscal years 2012-2013 and 2013-2014.

Respectfully Submitted,

Kathryn M. Holder

Kathryn M. Holder
Purchasing Staff

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports, of this meeting can be viewed at http://www.clackamas.us/bcc/business/

Thursday, April 12, 2012 – 10:00 AM

Public Services Building - 2051 Kaen Road, Oregon City, OR 97045

PRESENT: **Commissioner Charlotte Lehan**
Commissioner Jim Bernard
Commissioner Ann Lininger
Commissioner Paul Savas
Commissioner Jamie Damon

I. CALL TO ORDER

- Roll Call
- **Pledge of Allegiance**
- Approval of Order of Agenda

MOTION:

Commissioner Bernard: I move we move the Consent Agenda prior to Citizen Communication.
Commissioner Damon: Second.
~Board Discussion~ Commissioner Savas asked why this change – Commissioner Bernard stated he wants to complete the Business of the County before public comment.
Chair Lehan – all those in favor/opposed:
Commissioner Damon: Aye.
Commissioner Savas: Aye.
Commissioner: Lininger: No.
Commissioner Bernard: Aye.
Chair Lehan: Aye.
~Board Discussion~ Commissioner Lininger stated although it is a well intended motion, she would like to be accommodating to all the folks who have come today to speak. Chair Lehan stated we should move quickly through the agenda.
Chair Lehan – The Ayes have it 4 to 1 and the motion is approved.

II. PUBLIC HEARINGS

1. Board Order No. **2012-25** Accepting a Transfer of Jurisdiction from Clackamas County to the City of Oregon City for a Portion of Beavercreek Road, County Road No. 2594, DTD No. 32116

Bill Garity, Dept. of Transportation and Development presented the staff report.
Chair Lehan opened the public hearing for public comment, seeing no one coming forward; she closed the public hearing and asked for a motion.

MOTION:

Commissioner Lininger: I move we approve the Board Order Accepting a Transfer of Jurisdiction from Clackamas County to the City of Oregon City for a Portion of Beavercreek Road, County Road No. 2594, DTD No. 32116.
Commissioner Bernard: Second.
Chair Lehan – all those in favor/opposed:
Commissioner Damon: Aye.
Commissioner Savas: Aye.
Commissioner: Lininger: Aye.
Commissioner Bernard: Aye.
Chair Lehan: Aye.
Chair Lehan – The Ayes have it and the motion is approved.

2. Public Hearing on the Proposed 2012-2016 Housing and Community Development Consolidated Plan and Proposed 2012 Action Plan

Chuck Robbins, Community Development presented the staff report which included a review of the past performance of the County's Housing and Community Development programs and a review of the proposed 2012-2016 Housing and Community Development Action plan. This public hearing is part of the public process for these plans. He asked the Board to open the public hearing for public comment. After public comment direct the Community Development Division staff to make any changes necessary as a result of the Board's consideration of testimony at today's public hearing. There is no action by the Board today. The approval and adoption of the final plan will be on the Board's April 26, 2012 Business Meeting consent agenda.

~Board Discussion~ Commission Savas asked for clarification on the project on Kellogg Ave. and Risley Ave., which is scheduled for 2013 – is concerned about the delay. Chuck Robbins stated he will check about moving this project to 2012. Commissioner Lininger wanted acknowledge the importance of Los ninos cuentan, a program that services survivors of domestic violence.

Chair Lehan opened the public comment portion of the Public Hearing; she stated there are five people signed up to speak on this issue.

Mike Wells, 40550 SE Bobtail Lane. Sandy – supports the plan.

Scott Archer, Oregon City Community Services Director, 625 Center St., Oregon City – support the proposed plan.

Ron Rubino, Legal Aid Services of Oregon – supports the proposed plan.

Melissa Erlbaum, Clackamas Women's Services – supports the proposed plan.

Martha McLennan, Northwest Housing Authority – supports the proposed plan.

Chair Lehan asked if anyone else wished to speak, seeing none she closed the public hearing.

~Board Discussion~

She announced there is no Board action today – this will come back for Board approval and adoption at the April 26, 2012 Business Meeting.

III. DISCUSSION ITEMS

~NO DISCUSSION ITEMS SCHEDULED

{Consent Agenda moved prior to Citizen Communication}

V. CONSENT AGENDA

Chair Lehan asked the Clerk to read the Consent Agenda by title, then asked for a motion.

MOTION:

Commissioner Bernard: I move we approve the Consent Agenda.
Commissioner Lininger: Second.
Chair Lehan – all those in favor/opposed:
Commissioner Damon: Aye.
Commissioner Savas: Aye.
Commissioner: Lininger: Aye.
Commissioner Bernard: Aye.
Chair Lehan: Aye.
Chair Lehan – The Ayes have it and the motion is approved.

A. Health, Housing & Human Services

1. Board Order No. **2012-26** Approval of Mental Health Director's Designee to Authorize a Custody Hold Under *ORS 426.233* - BH

B. Department of Transportation & Development

1. Approval of an Intergovernmental Agreement with Oregon Department of Transportation for a Transportation Enhancement Grant to Fund the SE 122nd and SE 132nd Ave. Sidewalk Connections

2. Approval of an Intergovernmental Agreement with Oregon Department of Transportation for Right-of-Way Services for the SE 122nd and 132nd Ave. Sidewalk Connections Project

3. Approval of Amendment No. 1 to the Intergovernmental Agreement No. 27385 with the Oregon Department of Transportation for the Preliminary Engineering and Design of the Sunrise Project – Industrial Way

4. Approval of a Contract with Legacy Contracting, Inc. for the Salmon River (Arrah Wanna Blvd.) Bridge Replacement Project

C. Finance Department

1. Approval of Fourth Amendment to the Lease with HLW Associates, LLC for the Clackamas County Records Center

D. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

E. Department of Emergency Management

1. Approval of a Services Agreement with University of Oregon to Provide Staffing and Technical, Assistance for Hazard Mitigation Plan Update

2. Approval of Two Fiscal Year 2011 State Homeland Security Grant Agreements between Clackamas County and the State of Oregon

VI. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of Trillium Creek Park as the New Name for the Anderegg Property

{Citizen Communication moved after the Consent Agenda}

IV. CITIZEN COMMUNICATION

This is an opportunity to address the Board on items that are not on the Agenda or items that are on the Agenda but not scheduled for Public Comment. This portion of the Agenda is limited to items of County business for the Board as a whole to consider and may not be of a personal nature. If you wish to speak you should fill out a blue card and give it to our clerk. Please limit your comments to 3 minutes. Comments should be respectful and courteous to all. In most cases if you have an issue that you need a response on, it should also be submitted in writing along with the best way to get back to you. Commissioners may choose to respond under Commissioner Communication or staff may get back to you after the meeting.

http://www.clackamas.us/bcc/business/

1. Alice Richmond, West Linn – supports the Blue Heron purchase.
2. Richard Langdon, Portland – asked for definition of "similar uses" as it relates to ZDO-235.
3. Lorena Connelly, PO Box 1172, Clackamas – Executive Director of Los Ninos Cuentan – asked for County support for domestic violence survivors.
4. Yvonne Martines, Clackamas – domestic violence survivor, supports Los Ninos Cuentan. (spoke in Spanish with translator)
5. Jennifer Ortis, Oregon City, represents Los Ninos Cuentan – appreciates the County's support for Los Ninos Cuentan.
6. Rosalba Modina, Clackamas - domestic violence survivor, (spoke in Spanish with translator)
7. Gil Cdebaca, Milwaukie, Board member of Los Ninos Cuentan – He is the translator for the Spanish speaking citizens here today.
8. Maria Ocegirea, Happy Valley - domestic violence survivor, please continue your support (spoke in Spanish with translator)
9. Estela Pelayo, Happy Valley – spoke in support of Los Ninos Cuentan (spoke in Spanish with translator)
10. Melissa Erlbaum, West Linn – Clackamas Women's Services, commitment from BCC for 1 million to support children's safety.
11. Dave Jorling, Lake Oswego – concerned about the anti-rail ballot – future transportation is important to our community.
12. Mike Wells, Sandy – thanked the BCC for the 1 million commitment for domestic violence prevention and children safety.
13. Les Poole, Oak Grove – concerns with light rail and trolley trail.
14. Fred Nelligan, Oak Grove – opposes the citizen initiative on light rail on Sept. ballot.
15. Maryanna Moore, Gladstone – Oregon appeals court, freedom of speech.
16. Sherry Sparks, Milwaukie – victim of domestic violence, spoke in support of children safety
17. Jim Sanders, Milwaukie – Trimet IGA, where is the 25 million coming from.
18. William Wehr, Damascus – Jim Bernard's property.
19. Robert Shannon, Damascus – read a comment about Richard Langdon's freedom of speech, also the article in the paper is very good.
20. Libby Wentz, Gladstone – timelines for the agreement with NCPRD and Trimet – was against the change of 3 to 5 member board.
21. Tom Foeller, Oak Grove – too much disrespect at the Board meetings, we need to help the Commissioners to help our County.
22. Janet Schoenheit, Milwaukie – Mayor of Milwaukie recuse himself from any vote on light rail, Jim Bernard should also recuse himself.
23. Mack Woods, Canby, respect.
24. Eugene Schoenheit, Milwaukie – BCC attendance at meetings.
25. Jean Freeman, West Linn – campaign funds
26. Yvonne Lazerus, Oak Grove – light rail and 25 million.
27. Jerry Johnson, Milwaukie – appreciates Wed. evening meetings.
28. Eric Saub, Oregon City – misc.

VII. COMMISSIONERS COMMUNICATION

MEETING ADJOURNED - 12:23 PM

NOTE: ***Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.***

10

John S. Foote, District Attorney for Clackamas County
Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045
503 655-8431, FAX 503 650-8943, www.co.clackamas.or.us/da/

June 7, 2012

Board of Commissioners
Clackamas County

Members of the Board:

Approval to apply for the 2012-2014 Victims of Crime Act (VOCA) Competitive Project Grant

This VOCA grant will fund direct services to victims of child abuse, DUI/DWI crashes, domestic violence, adult sexual abuse, elder abuse, adults molested as children, survivors of homicide, victims of robbery and assault, and other violent crimes.

Direct services to victims includes the following: crisis intervention, ongoing emotional support, court accompaniment to grand jury, court hearings and trials, Victim Rights information, case status updates, community resource referrals, safety planning, and assistance completing applications for crime victim's compensation and restraining orders. Advocates also staff a 24/7 crisis line and are on-call for the Clackamas County Homicide Team, Child Abduction Team, and Commercial Sexual Exploitation of Children response team. In addition, advocates provide assistance with death notifications, crime scene cleanup referrals, and funerals.

The maximum two-year award is $90,000 and there is a matching in-kind contribution of 25% required. The twenty-four (24) month grant period begins October 1, 2012 and ends September 30, 2014. Grant funds will be used to retain an advocate whose position is funded by a VOCA grant that expires September 30, 2012.

RECOMMENDATION:

We respectfully recommend that the Board approve this request to apply for this grant as outlined in the application.

Sincerely,

John S. Foote

For information on this issue or attachments please contact
Sarah Brown at (503) 650-3532.