

TITLE 9

COMMUNITY DEVELOPMENT

Subtitle 2 — Land Development Code Division 3 — Zoning Districts

CHAPTER 931 OVERLAY CODE

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931.005 Title; short title

This Chapter, LCC 931.005 to 931.999, shall be known and cited as the “Linn County Overlay Code.” This Chapter may also be referred to and cited as the “Overlay Code.”

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §12 eff 6/30/99]

931.010 Compliance requirements

(A) Notwithstanding the presence or absence of any conditions, requirements, standards, or criteria with any use mentioned in this Chapter, all uses remain subject to any applicable conditions, requirements, standards, or criteria that may be set forth in other Chapters of the Land Development Code.

(B) The conditions, requirements, standards, and criteria are set forth generally in the following Chapters:

- (1) Decision criteria Chapters 932, 933
- (2) Conditions Chapter 933
- (3) Requirements Chapter 933
- (4) Standards
 - (a) Property Chapter 934
 - (b) Access Chapter 935

(C) The conditional uses set forth in this Chapter are subject to approval pursuant to meeting the applicable requirements and decision criteria in LCC Chapter 933 (Conditions, Requirements, and Decision Criteria Code).

(D) Development of a property within an Overlay must comply with:

- (1) any specific development standards of the underlying zoning district;

(2) the development standards set forth in LCC Chapter 934 (Development Standards Code); and

(3) except as provided in LCC 924.100 (B), the access improvement standards set forth in LCC Chapter 935 are applicable to all principal and accessory uses permitted in the Overlay.

(4) Development of any property in the Overlay may have one or more conditions imposed on the permit.

[Adopted 98-002 §3 eff 3/4/98]

I. AIRPORT OVERLAY (AO)

931.100 Subchapter title

This Subchapter, LCC 931.100 to 931.199, shall be known and may be cited as the “Linn County Airport Overlay Code” or simply as the “Airport Overlay Code.”

[Adopted 99-121 §12 eff 6/30/99]

931.105 Statement of purpose

The purpose of this Subchapter is:

(A) to prevent the establishment of air space obstructions near public use airports set forth in LCC 931.020, and

(B) to assure compatibility between the use of the airport and surrounding land uses.

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §12 eff 6/30/99]

931.110 AO; application of overlay

(A) The AO shall apply to boundaries of the airports set forth in subsection (B), except for areas within a city limit, as shown in the figures accompanying this Chapter.

(B) *AO airports.*

- (1) Albany Airport,
- (2) Lebanon Airport,
- (3) Davis Airport,
- (4) Daniels Field Airport,
- (5) Santiam Junction Airport, and
- (6) Green Trees Ranch Airport.

(C) The AO shall also apply to any future public use airports.

[Adopted 98-002 §3 eff 3/4/98]

931.130 AO; permit approval procedures

(A) Approval of an Airport Overlay shall comply with the decision criteria set forth in subsection (B) of this section.

(B) Decision criteria.

(1) Any development within the AO shall be reviewed by the Director for conformance to prescribed height and use standards. If conformance is not shown, then zoning and building approval shall not be given.

(2) The applicant shall provide proof that the proposed use is built and designed to minimize noise impacts.

(3) The applicant shall provide proof that the proposed use is not in violation of any easement established by the Oregon Department of Aviation.

(4) A land use denial from the Director may be appealed through provisions in LCC Chapter 921 (Administration of the Land Development Code).

(5) A variance to the standards of LCC 931.100 to 931.140 may be sought through provisions in LCC Chapter 938 (Variance Procedure Code). In addition to others entitled to notice, the airport owner and Oregon Department of Aviation shall be asked to comment on the variance application.

(6) Any land use allowed under any other zoning district which will be located in an approach zone shall be considered a conditional use and reviewed under provisions of LCC 933.200 to 933.220 or 933.250 to 933.260. In addition to others entitled to notice, the airport owner and Oregon Department of Aviation shall be asked to comment on the proposal.

(7) As a condition of approval for a variance or conditional use, a hold-harmless agreement, noise easement, and/or aviation and hazard easement may be required.

(8) *Regulations Not Retroactive.* The regulations prescribed by LCC 931.100 to 931.140 shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of LCC 931.100 to

931.140 or otherwise interfere with the continuance of non-conforming use. Nothing contained herein shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of LCC 931.100 to 931.140, and which is being diligently performed.

[Adopted 98-002 §3 eff 3/4/98; amd 16-070 §8 eff 4/13/16]

931.140 AO; property development standards

Development of all properties in the AO must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and specifically 934.800, and also to any specific standards applicable to the underlying zoning district.

[Adopted 98-002 §3 eff 3/4/98]

II. DELAYED ANNEXATION OVERLAY (DAO)

931.200 Subchapter title

This Subchapter, LCC 931.200 to 931.299, shall be known and may be cited as the “Linn County Delayed Annexation Overlay Code” or simply as the “Delayed Annexation Overlay Code.”

[Adopted 99-121 §12 eff 6/30/99]

931.205 Statement of purpose

The purpose of this Subchapter shall be to provide for the orderly and logical development of specific commercial and industrial projects within an urban growth area when such projects have been authorized as a part of a jointly-adopted Urban Growth Management Agreement between the affected city and Linn County.

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §12 eff 6/30/99]

931.220 DAO; application of overlay

(A) *Establishment of Zoning Map Overlay Designations.* Upon establishment or amendment of an Urban Growth Management Agreement between a city and the county which provides for delayed annexations, an overlay map shall be adopted indicating county zoning with the applicable city zone designations as a suffix.

(B) All overlay map designations shall be consistent with the adopted *Comprehensive Plan* designations for the area.

[Adopted 98-002 §3 eff 3/4/98]

931.230 DAO; uses permitted

(A) *Permitted Uses.* Any commercial or industrial use allowed within the applicable city zoning designation shall be permitted subject to:

(1) the procedures set forth in LCC 931.260, and

(2) further restrictions and standards which are consistent with the city comprehensive plan and city and county ordinance provisions may be established jointly by the county and city.

[Adopted 98-002 §3 eff 3/4/98]

931.240 DAO; property development standards

(A) *Property Development Standards.* Property development standards shall be determined by both the city and county as part of the review process described in LCC 931.260. The city implementing ordinances shall be used except when both the city and county agree to the use of other standards prior to annexation and where the applicant has provided assurances of meeting city standards upon annexation.

(B) Development of all properties in the DAO must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and also to any specific standards applicable to the underlying zoning district.

[Adopted 98-002 §3 eff 3/4/98]

931.250 DAO; annexation agreement

(A) *Provision of Services.* Except as otherwise or further stipulated in an Urban Growth Boundary Management Agreement, each delayed annexation agreement shall include resolution of the following additional considerations:

(1) *Maintenance of site improvements.* The city shall maintain all public improvements (such as sanitary sewer trunk lines and storm drainage improvement and maintenance) and require that provisions for maintenance of private

improvements (such as landscaping) are included in the delayed annexation agreement;

(2) *Roads (new construction).* All roads to be constructed shall be designed to meet city standards and shall be accepted into the city road system upon annexation unless otherwise agreed to by the city and county. Maintenance of such roads by the city shall commence upon completion of such roads unless otherwise agreed to by the city and county;

(3) *Other services.* The need for any additional services or special improvements (for example, security, installation of signals, railroad crossings) shall be considered during the review process described in LCC 931.260 and shall be negotiated between the city, county and the applicant; and

(4) *Site inspection, fees and plans .* All fees and inspections shall go to the agency providing the primary service unless otherwise stipulated in the delayed annexation agreement.

[Adopted 98-002 §3 eff 3/4/98]

931.260 DAO; review procedure

(A) *Delayed Annexation Development Review.* Proposals for commercial and industrial developments within an urban growth area where the city and county have agreed to a delayed annexation procedure shall be subject to the application procedures specified in this section.

(B) *Time Limits.* Except as modified in this subsection, final action on a Delayed Annexation Overlay map designation application shall be taken within 120 calendar days after the application is deemed complete.

(1) If an application is incomplete, city. notify the applicant of exactly what information is missing and shall give the applicant 30 days from the time the application was first received to submit the missing information.

(2) The 120-day time period specified in this section may be extended by the city and county for a reasonable period of time at the request of the applicant.

(C) *Filing of Applications.* Applications for delayed annexations shall be filed with the af-

affected city in a manner prescribed by the city. Plans for development of the property as may be required by the city shall be submitted for review. The city shall next process the application in accordance with applicable city standards and procedures.

(D) *Review of Applications by City and County.*

(1) Within 7 calendar days of receipt of a delayed annexation application, the city shall transmit a copy of the application and all attachments to the Linn County Planning and Building Department.

(2) Within 14 calendar days of receipt of the application, the city shall hold a meeting of representatives of the city, county and applicant to review the application.

(3) The proposal shall be subject to further review by the city and the county using applicable city plan policies and ordinance standards as the basis for review.

(E) *Action by City and County Planning Directors.* The city and county planning directors may take any of the following actions on a delayed annexation application:

(1) The application may be approved when it is consistent with applicable city comprehensive plan policies and ordinance provisions.

(2) The application may be denied when the proposal is not consistent with applicable city comprehensive plan policies and ordinance provisions.

(3) The application may be referred to a public hearing to be conducted jointly by the city council and Board. The decision to refer the matter to public hearing shall be based upon one of the following: disagreement between city and county staff as to the proper action to be taken on the proposal; a determination that there are major policy issues related to the proposal; or a determination that the scope of the proposal has significant large-scale impacts affecting the city, the urbanizing area or the county.

(F) *Public Notice of Director Decision to Approve or Deny the Application.* If the city and county planning directors either approve or deny

the request, notice of the staff decision shall be mailed to the applicant and to all owners of property according to procedures as required by the city for conventional annexations. The notice shall afford these parties an opportunity to appeal within 14 calendar days of the date of the decision.

(G) *Notice of Director Decision to Governing Bodies.* Determination of Need for Hearing. Notice of the planning director's decision to approve or deny the application shall be sent to the city council and to the Board. Within 21 calendar days of the date the staff decision was made, either governing body may make a determination that a joint city-county hearing is necessary and take the necessary steps to initiate the hearing.

(H) *Circumstances Under Which Director Decision is Final.* If a joint city-county public hearing is not called for through an appeal or a staff or governing body determination, the decision of city and county planning directors to approve or deny the application shall be final 21 calendar days following the decision date.

(I) *Joint Public Hearing by City and County Governing Bodies.*

(1) Appeal of a planning director decision or determination by either the planning directors or one of the governing bodies that such a hearing is necessary shall result in a public hearing on the delayed annexation proposal to be conducted jointly by the city council and Board.

(2) Notice of the joint public hearing shall be mailed to the applicant and to all nearby owners of property according to procedures as established by the city for conventional annexations. Notice shall also be published in a newspaper of general circulation in the affected city.

(J) *Decision by City and County Governing Bodies.*

(1) At the conclusion of the joint city-county public hearing, the city council and the Board shall render a decision.

(2) If the request for delayed annexation is approved by both jurisdictions, the city shall develop a delayed annexation contract which shall

become effective upon signing by the applicant, the landowner, the city council and the Board.

(3) If the decision of the two governing bodies is not the same, the delayed annexation request shall not be approved.

[Adopted 98-002 §3 eff 3/4/98]

III. HISTORIC RESOURCE OVERLAY (HRO)

931.300 Subchapter title

This Subchapter, LCC 931.300 to 931.399, shall be known and may be cited as the “Linn County Historic Resource Overlay Code” or simply as the “Historic Resource Overlay Code.”

[Adopted 99-121 §12 eff 6/30/99]

931.305 Purpose

The purpose of this Subchapter is to encourage continued use, rehabilitation and preservation of significant historic properties by allowing flexibility in zoning regulations which affect significant historic properties.

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §12 eff 6/30/99; amd 11-354 §1 eff 10/12/11]

931.320 HRO; relationship between Commission and Historic Resource Commission

An application for a land use action involving an historic property as defined in ORS 358.480, will be reviewed and decided in the order and manner set forth in LCC 921.700 to 921.750.

[Adopted 98-002 §3 eff 3/4/98]

931.330 HRO; application of overlay

(A) The Historic Resource Overlay may apply to any authorized unit of land where an historic property listed in the National Register of Historic Places is located.

(B) The application of the HRO to an underlying zoning district shall be subject to the applicable provisions of LCC 921.700 to 921.750.

[Adopted 98-002 §3 eff 3/4/98]

931.340 HRO; uses allowed outright

The uses set forth in this section are allowed outright in the HRO.

(A) Farm uses.

(B) Cultivation, management, protection and harvest of forest crops but excluding primary timber processing operations or maintenance and repair facilities for timber vehicles or equipment.

[Adopted 98-002 §3 eff 3/4/98]

931.350 HRO; uses permitted through a Type IIIB conditional use review

Any use not set forth in LCC 931.340 is a Type IIIB conditional use in the HRO and may be permitted subject to the applicable provisions of LCC Chapter 921 (Administration of the Land Development Code) and decision criteria contained in LCC 933.200 to 933.220.

[Adopted 98-002 §3 eff 3/4/98; amd 11-354 §1 eff 10/12/11]

931.360 HRO; decision criteria for uses permitted conditionally

(A) A conditional use permit must first be reviewed and approved by the Planning Commission and made subject to review and approval by the HRC that the decision criteria set forth in subsection (B) and, if applicable, the conditions set forth in subsection (C) are met.

(B) *Decision criteria.*

(1) The use will be consistent with the purpose statement of the HRO; and

(2) The use will not destroy or detract from the distinguishing character or qualities of the property and will be compatible with its historic and architectural integrity.

(C) *Conditions.* When an historic property which is not habitable or which has been used for non-dwelling purposes is proposed to be rehabilitated for or converted to a dwelling, its establishment as a dwelling will require as a condition of approval by the hearing authority that any exterior alteration shall be reviewed and approved by the HRC before they are initiated.

[Adopted 98-002 §3 eff 3/4/98]

931.370 HRO; alteration of property

(A) Proposed alterations of properties located in the HRO and listed in the *National Register of Historic Resources* shall be reviewed by the Historic Resource Commission according to the

procedures of LCC Chapter 921 (Administration of the Land Development Code).

(B) This section also applies to properties previously designated HRO.

(C) The Historic Resource Commission shall approve, approve with conditions or deny such proposed alterations according to a determination based on the standards of LCC 932.900 to 932.990 as to whether the alterations will destroy or detract from the distinguishing architectural and historic character and qualities of the property.

[Adopted 98-002 §3 eff 3/4/98]

931.380 HRO; property development standards

Development of all properties in the HRO must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and also to any specific standards applicable to the underlying zoning district.

[Adopted 98-002 §3 eff 3/4/98]

IV. LIMITED USE OVERLAY (LUO)

931.400 Subchapter title

This Subchapter, LCC 931.400 to 931.499, shall be known and may be cited as the “Linn County Limited Use Overlay Code” or simply as the “Limited Use Overlay Code.”

[Adopted 99-121 §12 eff 6/30/99]

931.405 Statement of purpose

(A) The purpose of this Subchapter is to identify property which has been approved for development through a *Comprehensive Plan* amendment and reasons exception (through provisions in ORS 197.732 and OAR 660-004-020 and 022).

(B) The LUO is intended to permit land uses which have been approved through an amendment and exception and to limit the site to the specific uses which have been approved.

(C) The LUO shall apply to the property until the overlay is removed through the plan amendment process.

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §12 eff 6/30/99]

931.410 LUO; application of overlay

(A) The following uses are allowed or permitted in the LUO:

(1) Those land uses allowed outright within the underlying zoning district; and

(2) Those land uses permitted conditionally within the underlying zoning district if approved; and

(3) The land uses or uses which have been approved through the goal exception process.

(B) The Limited Use Overlay has been applied to the property more specifically described as follows or as remapped by the Assessor’s Office:

(1) T15S, R3W, Section 9, Tax-lots 200, 203, 206, 207, 209, and 210 (Sherman Brothers Heavy Trucking).

(2) T14S, R3W, Section 4, Tax-lot 200 (Pioneer Villa).

(3) T11S, R4W, Section 33D, Tax Lot 1500 (Cushman Road).

(4) T12S, R3W, Section 4, Tax Lot 607 (VIRK, LLC).

(5) The 17 acres of land designated as HI-LUO by Ordinance No. 2014-356 (Selmet, Inc.).

(6) T11S, R03W, Section 10, Tax Lots 2400, 2401, T11S, R03W, Section 11, Tax Lot 1000.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; amd 00-311 §2 eff 6/28/00; amd 00-525 §2 eff 9/20/00; amd 2011-028 §4 eff 2/23/11; amd 14-356 §13 eff 11/5/14; amd 14-356 §13 eff 11/5/14; amd 16-370 §5 eff 12/14/16; amd 20-034 §3 eff 4/21/20]

931.420 LUO; additional uses permitted outright on specific LUO properties

(A) The following structures and uses and their accessory buildings and accessory uses are allowed outright on the properties set forth in LCC 931.410 (B) (1):

(1) An office building limited to the use by Sherman Brothers Heavy Trucking.

(2) A shop building.

(3) A truck fueling facility.

(4) Truck and trailer parking bays.

(5) An employee parking area.

(6) The provision of auto or truck repair or fueling services to autos and trucks owned or leased by Sherman Brothers Heavy Trucking.

(B) The following structures and uses and their accessory buildings and accessory uses are allowed outright on the properties set forth in LCC 931.410 (B) (2):

- (1) Motel;
- (2) Restaurant;
- (3) Mini-market;
- (4) Gas and diesel fueling stations;
- (5) Vehicle repair shop;
- (6) Vehicle and truck parking;
- (7) Caretaker dwellings; and
- (8) Accessory uses to paragraphs (1) to

(7) of this subsection.

(9) Medical offices located in building with a total size not to exceed 7,500 square feet.

(C) The following uses and their accessory buildings and accessory uses are allowed outright or permitted conditionally on the properties set forth in LCC 931.410 (B) (3):

- (1) A manufactured home sales lot.

(D) The following structures and uses and their accessory buildings and accessory uses are allowed outright on the property set forth in LCC 931.410(B)(4):

(1) A 6200 square-foot structure that will contain a convenience store with an inside fast-food restaurant;

(2) All uses allowed in the FIC zoning district;

(3) All uses existing on the property set forth in LCC 931.410(B)(4); and

(4) All accessory uses to those principle uses identified in paragraphs (1) to (3) to serve the traveling public.

(E) The following uses and their accessory buildings and accessory uses are allowed outright on the properties set forth in LCC 931.410(B)(5):

(1) Manufacturing of metal products as set forth in Ordinance No. 2014-356.

(F) The following structures and uses and their accessory buildings and accessory uses are allowed outright on the property set forth in LCC 931.410(B)(6):

(1) Construction and mining training center, including:

(a) A training building with classrooms, meeting rooms, locker rooms, staff offices, kitchen, and necessary accessory space.

(b) An air supported dome structure for indoor training and industry related activities.

(c) Outdoor heavy equipment and vehicle operations.

(d) Outdoor training and demonstration areas, including water operations.

(2) Ongoing mine reclamation activities.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/09; amd 00-311 §3 eff 6/28/00; amd 00-525 §3 eff 9/20/00; amd 2011-028 §5 eff 2/23/11; amd 2014-356 §14 eff 11/5/2014; amd 16-070 §8 eff 4/13/16; amd 16-072 §2 eff 4/20/16; amd 16-370 §5 eff 12/14/16; amd 20-034 §4 eff 4/21/20]

931.430 LUO; property development standards

Development of all properties in the LUO must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and also to any specific standards applicable to the underlying zoning district.

[Adopted 98-002 §3 eff 3/4/98]

931.440 [repealed]

[Adopted 98-002 §3 eff 3/4/98; amd 16-070 §8 eff 4/13/16; repealed 16-370 §5 eff 12/14/16]

V. SENSITIVE BIRD HABITAT OVERLAY (SBHO)

931.500 Subchapter title

This Subchapter, LCC 931.500 to 931.599, shall be known and may be cited as the “Linn County Sensitive Bird Habitat Overlay Code” or simply as the “Sensitive Bird Habitat Overlay Code.”

[Adopted 99-121 §12 eff 6/30/99]

931.505 Statement of purpose

(A) The purpose of this Subchapter is to protect sensitive habitats in addition to those protected by other programs such as the Willamette River Greenway program or the cooperative agreement between the Oregon Fish and Wildlife Commission and the Oregon Board of Forestry.

(B) The protected habitats are identified as critical for the survival of the Northern Bald Eagle, Osprey, Great Blue Heron and Band-tailed Pigeon.

(C) Habitat protection shall be achieved through the use of site-specific management plans that insure proposed uses and activities will neither destroy nor result in the abandonment of sensitive bird habitat areas.

[Adopted 98-002 §3 eff 3/4/98]

931.520 Sensitive bird habitat defined

(A) The habitats set forth in subsection (B) of this section are defined as sensitive bird habitats and are identified as resource sites in the Goal 5 Inventory Element of the *Comprehensive Plan* background report entitled *Open Spaces, Scenic and Historic Areas and Natural Resources*

(B) *Sensitive bird habitats.*

- (1) Northern Bald Eagle nests and roosts,
- (2) Osprey nests,
- (3) Great Blue Heron rookeries, and
- (4) Band-tailed Pigeon mineral springs.

(C) Unless alternatively identified by using cultural boundaries, waterways or topography, an established Sensitive Bird Habitat Overlay shall include land within:

- (1) ¼ mile of a Bald Eagle nest or roosting site;
- (2) ¼ mile of an Osprey nest;
- (3) 600 feet of a Great Blue Heron rookery; or
- (4) 600 feet of a Band-tailed Pigeon mineral spring.

[Adopted 98-002 §3 eff 3/4/98]

931.530 SBHO; development permit review required

All development permit requests submitted for land within a designated Sensitive Bird Habitat Overlay shall be considered as having a potential impact on the habitat. Such a request shall be subject to the requirements established in LCC 931.540.

[Adopted 98-002 §3 eff 3/4/98]

931.540 SBHO; review procedure and protection requirements

(A) A development permit in an area protected with a Sensitive Bird Habitat Overlay shall initiate the review process set forth in subsection (B).

(B) *SBHO review procedure.*

(1) Linn County shall notify the Oregon Department of Fish and Wildlife (ODFW) of the proposal within seven days of the permit request. ODFW shall review the request and submit a determination of impact report to Linn County within 14 days. The report shall include ODFW's perceived consequences of allowing the proposed development to occur. No response during that period will be taken as a determination of no impact. If a submitted report identifies an impact, no development permit will be issued for at least 21 days.

(2) ODFW's submission of a report establishing an impact shall be based upon either:

(a) Findings showing the development proposal would be located within 660 feet of a Northern Bald Eagle nest or roosting site or an Osprey nest; or within 300 feet of a Great Blue Heron rookery or a Band-tailed Pigeon mineral spring; or

(b) Findings showing, due to unique site conditions such as topography, that a development proposal outside the area established in (1) above but within the overlay will impact the habitat. ODFW shall provide the basis for such a finding in its determination of impact report.

(3) A site-specific habitat management plan shall be submitted to the Department by ODFW within 14 days of the determination-of-impact report. The plan shall consider nesting trees, critical nesting periods, roosting sites and buffer areas. It shall also identify measures that would specifically limit the proposed use in a manner consistent with LCC 931.500. ODFW may consult with the permit applicant, site landowners and other persons and agencies while developing the management plan.

(4) The Department shall review the applicant's development plan, ODFW's habitat

management plan, and other relevant information. The Department shall either establish conditions of permit issuance assuring that the proposed use will neither destroy nor result in bird abandonment of the habitat area or shall deny permit issuance.

[Adopted 98-002 §3 eff 3/4/98]

931.550 SBHO; property development standards

Development of all properties in the SBHO must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and also to any specific standards applicable to the underlying zoning district.

[Adopted 98-002 §3 eff 3/4/98]

VI. WILLAMETTE RIVER GREENWAY OVERLAY (WRGO)

931.600 Subchapter title

This Subchapter, LCC 931.600 to 931.699, shall be known and may be cited as the “Linn County Willamette River Greenway Overlay Code” or simply as the “Willamette River Greenway Overlay Code.”

[Adopted 99-121 §12 eff 6/30/99]

931.605 Statement of purpose

(A) The purpose of this Subchapter is:

(1) to protect the natural, agricultural, recreational and economic qualities of lands along the Willamette River in Linn County;

(2) to provide for the preservation, restoration and enhancement of historical sites, structures and facilities and areas of archaeological, ecological or scientific significance along the Willamette River through site-specific review of any intensification of use, change of use or development on properties located within the Willamette River Greenway in Linn County;

(3) to establish standards and requirements for the use of lands within the Willamette River Greenway in Linn County; and

(4) to implement the goals and policies of the *Comprehensive Plan* and the State of Oregon’s Willamette River Greenway Program.

[Adopted 98-002 §3 eff 3/4/98]

931.620 WRGO; application of overlay

(A) The provisions of LCC 931.600 to 931.680 shall apply to all lands within the Willamette River Greenway boundaries of Linn County as shown on the Zoning Map. The boundary is shown in detail on aerial photo maps on file with the Department. Interpretation of the exact location of the boundary shall be made by the Director from these photo maps.

(B) The provisions of LCC 931.600 to 931.680 shall apply to lands within the Willamette River Greenway boundary of Linn County in addition to any standards and requirements of the Development Code. Nothing in LCC 931.600 to 931.680 shall be construed to constitute a waiver or suspension of the provisions of any zoning district. In the case of any conflict between the provisions of LCC 931.600 to 931.680 and the provisions of any other chapter of the Development Code, the more restrictive provisions shall apply.

[Adopted 98-002 §3 eff 3/4/98]

931.630 Definitions for WRGO

The following definitions shall apply only to lands lying within the Willamette River Greenway Overlay boundaries:

(A) “**Change of use**” means making a different use of the land or water than that which existed on December 6, 1975.

(1) The term includes a change which requires construction, alterations of the land, water or other areas outside of the existing buildings or structures and which substantially alters or affects the land or water.

(2) The term does not include

(a) a change of use of a building, or
(b) other structure which does not substantially alter or affect the land or water upon which it is situated,

(c) the completion of a structure for which a valid permit had been issued as of De-

ember 6, 1975 and under which permit substantial construction had been undertaken by July 1, 1976.

(d) The sale of property is not, in itself, considered to be a change of use.

(e) Landscaping, construction of driveways, modifications of existing structures or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements.

(B) **“Develop”** means to bring about growth or availability, to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into lots or parcels or to create or terminate rights of access.

(C) **“Intensification”**

(1) Means any additions which increase or expand the area or amount of an existing use or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure.

(2) The term shall not include the completion of a structure for which a valid permit was issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use.

(D) **“Residential use of lands within the Greenway”** includes the practices and activities customarily related to the use and enjoyment of one’s home. Landscaping, construction of driveways, modification of existing structures or construction or placement of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification.

[Adopted 98-002 §3 eff 3/4/98]

931.650 WRGO; uses allowed outright

(A) The uses set forth in subsection (B) shall not require a Greenway conditional use permit. Any other proposed change of use, development or intensification shall only be permitted following approval of a Greenway conditional use permit.

(B) *Uses allowed outright.*

(1) Customary dredging and channel maintenance conducted under permit from the State of Oregon.

(2) Seasonal increases in gravel operations as provided under permit from the State of Oregon.

(3) The placing by a public agency of signs, markers and aids to serve the public.

(4) Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses of public lands, except that a substantial increase in the level of development of existing public recreational, scenic, historical or natural uses on public lands shall require review as provided by LCC 931.600 to 931.680.

(5) Erosion-control operations not requiring a permit from the Division of State Lands.

(6) Farm uses.

(7) Reasonable emergency procedures necessary for the safety or protection of property.

(8) Maintenance and repair usual and necessary for the continuance of an existing use.

(9) Landscaping, construction of driveways, repair or maintenance of existing structures and the construction or placement of accessory structures other than guest houses, provided that such activities are conducted in conjunction with uses already existing on the same property and that they are accomplished in a manner compatible with the purpose of LCC 931.600 to 931.680.

(10) The propagation of timber or the cutting of timber which is done for public safety or personal, noncommercial use or which does not require a permit in accordance with the Oregon Forest Practices Act (OFPA). The regulations of OFPA shall govern commercial timber activities within the Willamette Greenway.

(11) Water intakes and utilities in conjunction with an agricultural use and single-family residences.

(12) Private docks and wharves not more than two feet above water level, less than 100 square feet in area, not located on the main channel, not including any plumbing or electrical services and not more than one such facility per property ownership.

(13) On scenic easements acquired under ORS 390.332 (2) (a), the maintenance authorized by the statute and ORS 390.368.

[Adopted 98-002 §3 eff 3/4/98]

931.660 WRGO; decision criteria for conditional uses

(A) A Greenway conditional use permit may be granted, if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all the criteria set forth in subsection (B) are met.

(B) *Decision criteria.*

(1) The proposal is consistent with the protection of land in the Exclusive Farm Use zoning district.

(2) The proposal is consistent with the protection of sensitive fish and wildlife habitat areas identified by the Oregon Department of Fish and Wildlife. Consideration of habitats shall include, but not be limited to fish spawning sites, fresh water marshes, and great blue heron, osprey, and eagle nest trees and trees adjacent to the nest trees.

(3) The proposal is consistent with the preservation of significant natural and scenic areas, viewpoints and vistas.

(4) The proposal is consistent with the enhancement and protection of the natural vegetative fringe to the maximum extent practicable.

(5) The protection, preservation, restoration and enhancement of areas having ecological, scientific, historical or archaeological significance are not significantly impaired by the proposal.

(6) The quality of the air, water and land resources in and adjacent to the Greenway shall not be significantly impaired by the proposal.

(7) The proposal is consistent with the retention, in their natural state, of identified areas of annual flooding, flood plains and wetlands to the maximum extent practicable.

(8) The proposal shall not have a significant effect upon potentially erodible areas.

(9) The proposal is compatible with existing uses in the surrounding area.

(10) The proposal has been directed away from the Willamette River to the greatest extent possible.

(11) The maximum possible landscaping area, open space and vegetation will be provided between the Willamette River and the proposal.

[Adopted 98-002 §3 eff 3/4/98]

931.670 WRGO; aggregate extraction

(A) The extraction of aggregate resources shall be consistent with the criteria for review established in LCC 931.660.

(B) Extraction activities shall minimize adverse effects on water quality, fish and wildlife habitat, the natural vegetative fringe, stream bank stabilization efforts, stream flow, scenic quality, noise and safety.

[Adopted 98-002 §3 eff 3/4/98]

931.680 WRGO; property development standards

Development of all properties in the WRGO must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and specifically to LCC 934.850, and also to any specific standards applicable to the underlying zoning district.

[Adopted 98-002 §3 eff 3/4/98]

VII. AGGREGATE RESOURCE OVERLAY (ARO)

A. GENERAL PROVISIONS

931.700 Subchapter title

This Subchapter, LCC 931.700 to 931.755, shall be known and may be cited as the “Linn County Aggregate Resource Overlay Code” or simply as the “Aggregate Resource Overlay Code.”

[Adopted 99-156 §7 eff 6/30/99]

931.701 Statement of purpose

The purpose of this Subchapter is:

(A) to protect significant sand, gravel, rock, stone and related aggregate resources to ensure the continued availability of aggregates at reasonable costs for the overall development of Linn County;

(B) to coordinate the development and utilization of significant aggregate resources with other land uses to minimize conflicts;

(C) to establish standards of development and operation for significant aggregate resource extraction and processing sites;

(D) to prohibit the use of land in the Aggregate Resource Overlay (ARO) for uses incompatible with the extraction and processing of significant aggregate resources;

(E) to provide for the agricultural and forest use of land in the ARO prior to the development of extraction and processing activities; and

(F) to provide for the reclamation, rehabilitation and beneficial final use of aggregate resource sites in a manner compatible with the surrounding land use pattern.

[Adopted 99-156 §7 eff 6/30/99]

931.702 Definitions

The definitions set forth in LCC 939.030 apply to this Subchapter.

[Adopted 99-156 §7 eff 6/30/99 (OAR 660-023-010 and 660-023-0180 (1))]

931.704 Aggregate Resource Overlay; content and application

(A) *Contents.* The Aggregate Resource Overlay (ARO) comprises two areas, the mining area and the impact area.

(B) *Application of the ARO.*

(1) The ARO may be applied to significant aggregate resource sites following:

(a) a Type IIIA legislative *Plan* amendment process, if the application is initiated by Linn County; or

(b) a Type IIIB application for a post-acknowledgment *Plan* amendment, if the application is not initiated by Linn County.

(2) Before applying an ARO or ARO-I to the underlying zoning district, the decision maker shall:

(a) comply with the process identified in LCC Chapter 939 (Mining Permit and Uses Code); and

(b) implement the ARO by amendments to the *Comprehensive Plan* text and the Land Development Code Zoning Map; and

(c) include within the boundary of the ARO the mining area and ARO-I all property as determined to be within the impact area.

(3) The decision maker shall not apply either a mining area or an impact area to land within another county without that county’s consent, or to land within a city or its urban growth boundary without that city’s consent.

(C) Sites formerly designated as an Aggregate Extraction and Processing (AXP) zoning district are re-designated with the ARO classification. The re-designation shall not alter the mining of aggregate except as authorized in OAR 660, Division 23.

[Adopted 99-156 §7 eff 6/30/99; amd 11-356 §1 eff 10/12/11]

931.706 Application for an ARO

A person may apply for the application of an Aggregate Resource Overlay as provided in LCC Chapter 939 (Mining Permit and Uses Code) and Chapter 921 (Land Development Administration Code).

[Adopted 99-156 §7 eff 6/30/99 (OAR 660-023-0180 (6))]

931.710 ARO; mining area property development standards

Development of all properties in the ARO or ARO-I must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and specifically to LCC 934.350 to 934.359, and also to any specific standards applicable to the underlying zoning district.

[Adopted 99-156 §7 eff 6/30/99; amd 11-356 §1 eff 10/12/11]

931.715 ARO; mining area final use and site reclamation

Each extraction site shall be reclaimed to a final use as set forth in LCC 933.190.

[Adopted 99-156 §7 eff 6/30/99]

931.720 ARO; termination of Aggregate Resource Overlay

When a significant site has been fully mined and reclamation has been completed, the affected property within the mining area and the impact area shall be rezoned to remove the ARO and ARO-I designation.

(A) The zone change shall be initiated by the County, the owner or contract purchaser of the property comprising the mining area.

(B) If a restrictive covenant is imposed within the ARO or ARO-I, it shall state that the obligations imposed expire upon the termination of the ARO or ARO-I.

(C) Removal of the ARO or ARO-I shall not relieve requirements on the part of the owner or operator to reclaim the site in accordance with the DOGAMI reclamation plan, ORS 517.750 through 517.900, and the rules adopted thereunder.

[Adopted 99-156 §7 eff 6/30/99; amd 11-356 §1 eff 10/12/11]

B. USES ALLOWED OR PERMITTED IN THE ARO

931.730 ARO; mining area uses allowed outright

(A) The uses set forth in subsection (B) through subsection (C) are allowed outright in the mining area subject to compliance with the devel-

opment standards in LCC 934.350 to 934.359, any requirements adopted as part of the *Comprehensive Plan* for the protection of significant mineral and aggregate sites, and an approved site development plan.

(B) *Non-dwelling uses allowed outright.*

(1) *Aggregate materials.*

(a) Operations that entail extraction and stockpiling of mineral and aggregate materials mined and processed onsite.

(b) Processing, including but not limited to crushing, washing, milling and screening.

(c) The batching and blending of mineral aggregate into asphaltic and portland cement products located within the operating permit area, except the batching or blending of mineral and aggregate materials into asphalt concrete within two miles of a planted commercial vineyard existing on the date the application was received for the batch plant.

(2) *Existing processing operations.* A currently approved aggregate processing operation at an existing site may process material from a new or expansion site without obtaining a re-authorization of the existing processing operation unless limits on such processing were established at the time it was permitted by the County.

(3) Equipment storage yard, offices, maintenance and storage buildings, and other accessory structures, when used in conjunction with on-site mining operations.

(4) Retail and wholesale sales of aggregate products produced on-site.

(5) Farm and forest uses.

(6) Signs, subject to the development standards in LCC 934.210 to 934.217.

(7) Transportation improvements.

(8) Other activities including buildings and structures necessary and accessory to development or reclamation of the onsite mineral or aggregate resource.

(C) *Dwellings allowed outright.* Alteration, restoration, or replacement of a lawfully established dwelling meeting the requirements in LCC 933.180.

931.735 ARO; mining area uses permitted through Type IIA conditional use review

(A) The uses, including principal and accessory buildings, set forth in subsection (B) may be permitted in the mining area pursuant to a Type IIA review process. Permitted uses shall comply with any requirements adopted as part of the *Comprehensive Plan* for the protection of significant aggregate sites, and an approved site development plan.

(B) *Dwellings*. One on-site manufactured dwelling, including accessory buildings, for a caretaker or watchman for each authorized land use, subject to LCC 932.800 to 932.815.

[Adopted 99-156 §7 eff 6/30/99]

931.740 ARO; mining area uses permitted through Type IIIB conditional use review

(A) The uses, including principal and accessory buildings, set forth in subsection (B) may be permitted in the mining area pursuant to a Type IIIB review process. Permitted uses shall comply with any requirements adopted as part of the *Comprehensive Plan* for the protection of significant aggregate sites, and an approved site development plan.

(B) *Uses permitted conditionally*.

(1) Operations for exploration and extraction of minerals other than aggregate materials.

(2) Exploration for and production of geothermal resources, subject to LCC 932.100 to 932.160.

(3) Exploration and production of oil and gas, subject to LCC 932.100 to 932.160.

(4) Utility facilities necessary for public service, including commercial, thermal, electrical-generating facilities producing power for public sale from resources obtained on-site.

(5) Hunting or fishing preserves.

(6) A site for the disposal of solid waste together with equipment, facilities, or buildings necessary for its operation subject to:

(a) LCC 932.500 to 932.580; and

(b) a permit, if required, by the Department of Environmental Quality.

(c) the site is operated only as an interim subsequent use in accordance with an approved final use and reclamation plan.

(7) Facilities for the primary processing of forest resources.

(8) Private airports.

[Adopted 99-156 §7 eff 6/30/99]

931.745 ARO-I; impact area uses allowed outright

(A) The uses, including principal and accessory buildings, set forth in subsection (B) through subsection (C) are allowed outright in the impact area. Allowed uses shall comply with the requirements of the underlying zone and any requirements in the *Comprehensive Plan* for the protection of significant aggregate sites.

(B) *Non-dwelling uses*. The non-dwelling uses allowed outright by the underlying zone subject to the requirements of the underlying zone and any requirements in the *Comprehensive Plan* for the protection of significant aggregate sites.

(C) *Dwellings*. The Alteration, restoration, or replacement of a lawfully established dwelling meeting the requirements in LCC 933.180.

[amd 11-356 §1 eff 10/12/11]

931.750 ARO-I; impact area uses permitted through Type IIA conditional use review

(A) The uses, including principal and accessory buildings, set forth in subsection (B) through subsection (C) may be permitted in the impact area pursuant to a Type IIA review process. Permitted uses shall comply with the requirements of the underlying zone and any requirements in the *Comprehensive Plan* for the protection of significant aggregate sites.

(B) *Non-dwelling uses*. The non-dwelling uses permitted through a Type IIA conditional use review by the underlying zone, subject to the requirements of the underlying zone and any requirements in the *Comprehensive Plan* for the protection of significant aggregate sites.

(C) *Dwellings*. The dwellings permitted through a Type IIA conditional use review in the underlying zoning districts, subject to the requirements of the underlying zone and any requirements in the *Comprehensive Plan* for the protection of significant aggregate sites.

(D) No use in the impact area that is a noise- or dust-sensitive use may be approved unless a finding is first made that the sensitive use has been protected by the imposition of conditions or unless the owner of the sensitive use has recorded a waiver of remonstrance in the land records of the County.

[Adopted 99-156 §7 eff 6/30/99; amd 11-356 §1 eff 10/12/11]

931.755 ARO-I; impact area uses permitted through Type IIIB conditional use review

The uses, including principal and accessory buildings, permitted by the underlying zoning district through a Type IIIB conditional use review may be permitted in the impact area pursuant to a Type IIIB review process. Permitted uses shall comply with the requirements of the underlying zone and any requirements in the *Comprehensive Plan* for the protection of significant aggregate sites.

[Adopted 99-156 §7 eff 6/30/99]

#11 2016-370 §5 eff 12/14/16
#12 2020-034 §§3-4 eff 4/21/20

Statutory References and Other Authorities:

ORS 197; 203; 215; 517; OAR 660, Div. 023

Legislative History of Chapter 931:

Adopted 98-002 eff 3/4/98

Amendments to 98-002

- #1 98-432 eff 10/21/98
- #2 99-156 §7 eff 6/30/99
- #3 00-311 §§2-3 eff 6/28/00
- #4 00-525 §§2-3 eff 9/20/00
- #5 11-354 §1 eff 10/12/11
- #6 11-356 §1 eff 10/12/11
- #7 2011-028 §1 eff 02/23/11
- #8 2014-356 §1 eff 11/05/2014
- #9 2016-070 §8 eff 4/13/16
- #10 2016-072 §2 eff 4/20/16

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