

423 ENVIRONMENTAL PERFORMANCE STANDARDS

The provisions of Section 423 are known as performance standards. All uses and activities shall observe these standards in order to achieve the purpose and objectives of this Code. Continued compliance is required and may be required to be demonstrated by the owner, if the Director has reason to believe incidence of noncompliance has occurred.

423-1 Existing Uses

Activities, uses, equipment and processes existing as of the effective date of this Code that do not meet the standards set forth in this Section are subject to the following requirements:

- 423-1.1 Building expansions or installations of new uses shall conform to the applicable standards of this Section and are subject to the procedures and regulations of the nonconforming use section of this Code.
- 423-1.2 All uses not otherwise prescribed by this Section shall conform to applicable Federal, State, and local laws and regulations.

423-2 New Uses

Development after the effective date of this Code shall observe the following requirements:

- 423-2.1 When Federal, State and local standards apply, the most restrictive shall govern.
- 423-2.2 Prior to issuance of a development permit or certificate of occupancy, the Director may require:
 - A. Evidence that mandatory Federal, State and local permits have been or will be obtained.
 - B. Information demonstrating that the proposed development complies with applicable standards set forth in this Section. This information may be required as a report of findings prepared by qualified engineers or other technical consultants.

423-3 Measurements

Accurate and representative measurements, as necessary, shall be made according to accepted engineering practice. Measurements shall be made at or anywhere outside the property lines of the property from which an emission is generated.

423-4 Air Quality

All development shall comply with the State Department of Environmental Quality Air Quality Standards.

423-5 Odor

All development shall comply with the State Department of Environmental Quality Standards pertaining to odor.

423-6 Noise

All development shall comply with the State Department of Environmental Quality Standards relating to noise. Demonstration of compliance may be required by the Review Authority.

423-7 Vibration

No development shall generate ground vibration which is perceptible by the Director beyond the property line of origin without use of instruments. Ground vibrations caused by motor vehicles, trains, aircraft, or temporary construction work are exempt from strict application of these standards, but good faith efforts to control such vibrations shall be made by the originator.

423-8 Heat and Glare

Heat and glare shall be limited as follows:

423-8.1 Except for exterior lighting, operations producing heat or glare shall be conducted entirely within an enclosed building.

423-8.2 Exterior lighting shall be directed entirely away from adjacent properties.

423-9 Storage

423-9.1 All materials, including wastes, shall be stored and all grounds maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.

423-9.2 No open storage of materials and equipment shall be permitted unless contained by a site obscuring fence or landscaped screening.

423-9.3 Fencing will be allowed between the required landscaping and use where necessary to protect the property concerned or to protect the public from a dangerous condition subject to the following provisions:

A. No fence shall be constructed in the required setback from the public road right-of-way.

B. Fences shall be constructed as required through development review.

C. Fencing or sight obscuring screening for storage areas must be at least six (6) feet, but no more than ten (10) feet high.

423-9.4 Storage of Hazardous Materials

Developments which store hazardous materials must comply with State standards, OAR Chapter 340 Division 63, and the Federal standards, 40 CFR Part 262 and 264 and shall demonstrate such compliance. All hazardous materials must be stored above ground. Transport of and disposal of such materials shall be in conformance with all applicable local, State and Federal regulations with such compliance demonstrated.

423-10 Drainage and Waste Water

All development shall comply with the State Department of Environmental Quality Water Quality Standards for all runoff, drainage and waste water.

423-11 Adequate Water Supply

All development shall be required to have an adequate water supply. Adequacy shall include:

- 423-11.1 Adequate supply for the use prior to issuance of a building permit (see Section 501-7.1, Critical Services).
- 423-11.2 Outside the UGB, when any Special Use of Article IV will require an amount of water in excess of what would normally be used if the property were developed for rural homesites, the following information:
 - A. An explanation of how the water will be supplied; and
 - B. An explanation of the potential impact of the proposed water system on the surrounding properties.
 - C. Approval of a subdivision outside the UGB proposing a community water supply shall be subject to the provisions of Section 423-11.2 A. and B.

423-12 Radioactive Materials

The handling and storage of radioactive materials, the discharge of radioactive materials into air or water, and the disposal of radioactive waste in connection with all uses shall be in conformance with all applicable local, State, and Federal regulations with such compliance demonstrated.

423-13 Toxic or Noxious Matter

All development shall comply with the State Department of Environmental Quality standards pertaining to omission of toxic or noxious matter and such compliance shall be demonstrated.

423-14 Determination of Violation

Alleged violations of the performance standards set forth in this Section shall be determined and enforced in the following manner:

423-14.1 County Determination:

Where it can be determined by the Director or a State official, the determination shall be so made and an order of compliance requiring correction of the violation within a reasonable time period shall be issued. If necessary to eliminate a violation, the Director shall take or cause to be taken, lawful action as provided for in the Washington County Community Development Code.

423-14.2 Third Party Determination:

Where determination of a violation entails the use of highly skilled personnel or expensive instruments not ordinarily available to the County, and when, in the judgment of the Director, a violation may exist, the Director shall so notify the person who owns or controls the use in question.

423-14.3 Notice:

The notice shall describe the particulars of the alleged violation and state the reasons why the Director believes the violation exists. The notice shall also require a determination of compliance or correction of the alleged violation within a reasonable time limit to be set by the Director. The notice shall further state that if the alleged violation is not corrected, a technical determination based on the performance standards set forth in this Code shall be made by qualified engineers or other technical consultants, and that if a violation as alleged is found, enforcement action shall be taken according to Section 215 of this Code.

423-15 Conflicting Provisions

Where standards set forth in this Section conflict with provisions elsewhere in the law, the more stringent shall govern.

424 CREATION OF PARCELS IN THE EFU, EFC AND AF-20 DISTRICTS

In order to create a lot or parcel in the EFU, EFC, or AF-20 Districts, the following applicable standards shall be met. In addition to the following standards, in the EFU and AF-20 Districts, the applicable requirements of ORS 215 shall be met, and in the EFC District, the applicable requirements of OAR 660-06-026 shall be met. Findings shall be made for each of the applicable standards.

424-1 Creation of New Lots or Parcels for Farm Use in the EFU and AF-20 Districts

The creation of new lots or parcels for farm use in the EFU and AF-20 Districts may be approved subject to the following standards:

- 424-1.1 The minimum lot or parcel size shall be eighty (80) acres unless Section 424-1.2 requires the minimum lot area to be greater;
- 424-1.2 The proposed division of land shall be appropriate for the continuation of the existing commercial agricultural enterprise with the area. Parcels used or to be used for training or stabling facilities shall not be considered appropriate to maintain the existing commercial agricultural enterprise in an area where other types of agriculture occur;
- 424-1.3 The minimum lot area requirement shall not be reduced through a variance or hardship relief request pursuant to Section 435 or any other Code provision; and
- 424-1.4 The proposed division of land will not seriously interfere with preservation of fish and wildlife areas and habitats identified in the Washington County Comprehensive Plan or how the interference can be mitigated.

424-2 Creation of Forest Related Parcels of at Least Eighty (80) Acres in the EFC District

A forest related parcel of eighty (80) acres or more shall be approved subject to the following standards:

- 424-2.1 A variance or hardship relief request to reduce the minimum lot size below eighty (80) acres shall not be permitted.
- 424-2.2 The proposed parcels shall meet the applicable standards of Section 428.

424-3 Creation of a Parcel for a Nonfarm Dwelling in the EFU and AF-20 Districts

The creation of new lots or parcels for dwellings not in conjunction with farm use (nonfarm dwelling) may be approved subject to the following standards. For tracts that are predominately high-value farmland, address Sections 424-3.1, 3.3 and 3.4. For tracts that are not predominately high-value farmland, address Sections 424-3.2, 3.3 and 3.4.

- 424-3.1 On land identified as high-value farmland:
 - A. The dwelling has been approved through Section 430-85.1 A., B., D., E. and F. (nonfarm detached dwelling unit);

- B. The originating lot or parcel is at least 100 acres; and all of the following:
- (1) Is not stocked to the requirements under ORS 527.610 to 527.770;
 - (2) Is composed of at least 95 percent Class VI through VIII soils;
 - (3) Is composed of at least 95 percent soils not capable of producing 50 cubic feet per acre per year of wood fiber.
 - (4) Any new nonfarm lot or parcel will not be smaller than 20 acres and any residual lot or parcel that is not designated as a nonfarm parcel is at least 80 acres.

424-3.2 On land not identified as high-value farmland:

- A. The dwelling has been approved through Section 430-85.1D and 85.2, nonfarm detached dwelling unit;
- B. The originating lot or parcel is at least 82 acres. Any new nonfarm lot or parcel will not be smaller than 2 acres and any residual lot or parcel that is not designated as a nonfarm parcel is at least 80 acres.

424-3.3 The lot or parcel is created at the time the dwelling is approved.

424-3.4 The Review Authority shall not approve a subdivision or series partition for a nonfarm dwelling. The requirement regarding a series partition applies only to applications for a land division submitted after July 1, 1997. For the purposes of this subsection, "series partition" shall have the meaning given that term in ORS 92.305.

424-4 Creation of a Parcel for a Nonfarm Use (Not Including a Dwelling) in the EFU and AF-20 Districts

424-4.1 The lot or parcel is not larger than the minimum size necessary for the use; and

424-4.2 The parcel is created at the time the use is approved.

424-5 Creation of a Parcel With an Existing Historic Dwelling in the EFU and AF-20 District

To create a parcel with an existing dwelling to be used for historic property:

424-5.1 The dwelling shall be listed on the National Register of Historic Places.

424-5.2 A replacement dwelling to be used in conjunction with farm use may be approved for the vacant parcel at the time the parcel is created if the dwelling has been approved through Subsection 340-4.1 K. or 344-4.1 K., whichever is applicable.

424-5.3 The Review Authority shall not approve the land division unless any additional tax imposed for the change in use has been paid.

424-6 Creation of a Parcel With an Existing Dwelling Used as a Residential Home in the EFU and AF-20 Districts

To create a parcel with an existing dwelling to be used as a residential home:

- 424-6.1 The dwelling shall be used as a residential home as defined in Subsection 106-179; and
- 424-6.2 Before or concurrent with partition approval, the dwelling shall be approved through Section 340-5.1 D. or 344-5.1 D., whichever is applicable.
- 424-6.3 The Review Authority shall not approve the land division unless any additional tax imposed for the change in use has been paid.

424-7 Creation of a Parcel Less Than Eighty (80) Acres in the EFC District

New land divisions less than eighty (80) acres may be approved only for the uses listed in sections: 342-3.2 A. (navigation and aviation aids); 342-3.1 C. (exploration for geothermal, gas, oil, etc.); 342-4.1 C. (firearms training facility); 342-3.2 F.. (log scaling and weigh stations); 342-3.2 I. (parks); 342-3.2 J. (permanent logging equipment repair and storage); 342-3.1 G. (production of geothermal, gas, oil, etc.); 342-3.2 L. (reservoirs and water impoundments); 342-3.1 I (DEQ-mandated solid waste disposal site); 342-3.2 M. (communication facilities and transmission towers); 342-3.2 R. (utility facilities for generating power); 342-3.2 S. (water intake facilities and related facilities); 342-4.1 B. (campground); 342-3.2 B. (cemetery); 342-4.1 D. (mining and processing of oil, gas and other subsurface resources); 342-4.1 H. (fire station); 342-4.1 E. (permanent facility for the primary processing of forest materials); 342-4.1 I. (solid waste disposal site); 342-4.1 J. (communication facilities and transmission towers); subject to findings demonstrating compliance with the following:

- 424-7.1 The use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- 424-7.2 The use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;
- 424-7.3 The parcel is not larger than the minimum size necessary for the use; and
- 424-7.4 The applicant shall sign and record in agreement form, in the Deed and Mortgage records of the County, a statement which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules.

424-8 Creation of a Parcel With an Existing Dwelling in the EFC District

A parcel with an existing dwelling may be approved upon findings that:

- 424-8.1 The parcel is five (5) acres or less, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than ten (10) acres;
- 424-8.2 The dwelling existed prior to June 1, 1995;

- 424-8.3 The configuration of the parcels will allow for the establishment of an alternate septic tank drainfield for the existing dwelling;
- 424-8.4 The remaining parcel (not containing the dwelling) is at least eighty (80) acres; and
- 424-8.5 Prior to final approval for a dwelling, the applicant records a restrictive covenant that precludes construction of a dwelling on the remaining parcel (80 acre or larger). The restrictive covenant shall be irrevocable, unless the Director finds that the remaining parcel is no longer subject to Statewide Goal 3 (Agricultural Lands).

424-9 Division of a Lot or Parcel With at least Two Existing Dwellings in the EFC District

Division of a lot or parcel may be approved upon findings that:

- 424-9.1 At least two (2) dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
- 424-9.2 Each dwelling complies with the criteria for a replacement dwelling under Section 430-8;
- 424-9.3 Except for one lot or parcel, each lot or parcel created under this subsection is between two (2) and five (5) acres, limited to the smallest practicable size;
- 424-9.4 At least one (1) dwelling is located on each lot or parcel created under this subsection; and
- 424-9.5 The applicant provides evidence that the landowner of a lot or parcel created under this subsection has recorded with the deed records for Washington County a deed restriction prohibiting the future dividing of the subject lot or parcel. 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 Review Authority and shall state that the applicable comprehensive plan or land use regulations have been changed so that the lot or parcel is no longer subject to Statewide Goal 4 (Forest Lands), or unless the land division is subsequently authorized by law or by a change in Statewide Goal 4 (Forest Lands).
- 424-9.6 A lot or parcel may not be divided under this subsection if approval of an existing dwelling on the lot or parcel specified that the dwelling could not be partitioned from the parent lot; or where eventual removal of the dwelling is required (e.g., temporary dwellings).

424-10 Division of Land for Public Parks or Open Space in the EFC District

A proposed division of land in a forest zone to create two parcels may be approved if the proposed division of land is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels.

- 424-10.1 A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:

- A. If the parcel contains a dwelling or another use allowed under ORS 215, the parcel must be large enough to support continued residential use or other allowed use of the parcel; or
 - B. If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under ORS 215.705 to 215.750, based on the size and configuration of the parcel.
- 424-10.2 Before approving a proposed division of land under this section, a condition of approval shall be required that the provider of public parks or open space, or the not-for-profit land conservation organization record an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:
- A. Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone except park or conservation uses; and
 - B. Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.
- 424-10.3 If a proposed division of land under Section 424-10 results in the disqualification of a parcel for a special assessment described in ORS 308A.718 or the withdrawal of a parcel from designation as riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS 308A.371 or 308A.700 to 308A.733 before the county may approve the division.

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425 DESIGNATION OF MARGINAL LANDS

425-1 Parcel Size Criteria

425-1.1 Lands to be designated marginal must meet one of the following:

- A. At least fifty (50) percent of the proposed marginal land, plus the lots or parcels at least partially located within one-quarter ($\frac{1}{4}$) mile of the perimeter of the proposed marginal land consists of lots or parcels twenty (20) acres or less in size on July 1, 1983; or
- B. Is located within an area not less than two-hundred forty (240) acres of which at least sixty (60) percent is composed of lots or parcels that are twenty (20) acres or less in size on July 1, 1983; or
- C. The proposed marginal land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on the effective date of SB 237, 1983 Oregon Laws, and is not capable of producing fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21).

425-1.2 For the purposes of Section 425-1.1 A. and 425-1.1 B.:

- A. Lots or parcels located within an urban growth boundary adopted by a city or by the Metropolitan Service District shall not be included in the calculation; and
- B. Only one lot or parcel exists if:
 - (1) A lot or parcel included in this area as defined in Section 425-1.1 A. is adjacent to one or more such lots or parcels;
 - (2) On July 1, 1983, greater than possessory interests are held in those adjacent lots or parcels by the same person, parents, children, sisters, brothers or spouses, separately or in tenancy in common; and
 - (3) The interests are held by relatives described in Section 425-1.2 B. (2) above, and one relative held the interest in the adjacent lots or parcels before transfer to another relative.
- C. For the purposes of Section 425-1.2 B.:
 - (1) Lots or parcels are not adjacent if they are separated by a public road; and
 - (2) Lot and parcel have the meanings given those terms in ORS 92.010.

425-1.3 Lots or parcels for the purposes of Section 425-1.1 B. shall not be included in the calculation of the two-hundred forty (240) acres if they are within an area for which the County has adopted an exception.

425-2 Management Criteria (Income Test)

If the land meets the criteria of 425-1, land may be designated as marginal when it has not been managed during three (3) of five (5) calendar years before January 1, 1983 (1978 through 1982), as part of:

- 425-2.1 A farm operation that produced \$20,000 or more in annual gross income; or
- 425-2.2 A forest operation capable of producing an average over the growth cycle of \$10,000 in annual gross income.
- 425-2.3 Evidence required to determine compliance with the farm operation income requirements above may include the following:
 - A. An affidavit signed by the person generating the farm income, certifying that the income requirements have been met;
 - B. Federal income tax returns; or
 - C. Sales receipts of products sold from the property or other information as may be necessary to prove income.

The County may, in any event, rely on statistical information compiled by the Oregon State University Extension Service, the Oregon Department of Forestry or other objective criteria to calculate income during the years 1978 through 1982.

425-3 Parcels Within the Quarter-Mile Test Area

Notwithstanding the fact that only a certain amount of land is proposed to be designated marginal for the purposes of establishing the test area of 425-1, any lot or parcel that is within the test area and meets the income test set out in 425-2 may be designated as marginal land.

425-4 Notification

In addition to the notification required by Article II, Notice shall be sent to:

- 425-4.1 All property owners of record whose parcels are at least partially located within the one-quarter ($\frac{1}{4}$) mile of the proposed marginal land parcel, when the parcels have been used to determine eligibility through Section 425-1.1 A., as well as all property owners of record within five-hundred (500) feet of the perimeter of the designated quarter mile boundary, or
- 425-4.2 All property owners within five-hundred (500) feet of the perimeter of the designated two-hundred forty (240) acres when the parcels have been used to determine eligibility through Section 425-1.1 B.

425-5 Notation of Marginal Land Designation Approval

- 425-5.1 The Director designate shall make a notation on the Land Use Maps used by the Department of Land Use and Transportation which reads either MGL-A (approved) or MGL-D (denied) as appropriate.
- 425-5.2 All MGL-A notations shall be made known to the Department of Assessment and Taxation for their use.
- 425-5.3 The Director shall keep a master list of all MGL-A notations for use of the Department of Land Use and Transportation, the Department of Assessment and Taxation and for purposes of the State reporting requirements.

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426 EROSION CONTROL

426-1 Purpose and Intent

This section is intended to implement the administrative rules of the Oregon Department of Environmental Quality mandating erosion control measures in the Tualatin River and Oswego Lake sub-basins which are to be applied during construction to control and limit soil erosion. These standards are to be applied only during construction to control and limit soil erosion.

426-2 Applicability

426-2.1 Notwithstanding any other provision of this Code, compliance with the following provisions shall be required of all land development, as defined below.

426-2.2 The following subsections shall apply to any new land development within the Tualatin River and Oswego Lake sub-basins, except those developments with application dates prior to January 1, 1990. The application date shall be the date on which a complete application for development approval is received by Washington County in accordance with the provisions of Article II.

426-3 Definitions

426-3.1 "Erosion Control Plan" shall be a plan containing a list of best management practices to be applied during construction to control and limit soil erosion. Erosion control plans shall be prepared in conformance with the Washington County Erosion Control Plans Technical Guidance Book, January 1991, or its successor.

426-3.2 "Land Development" refers to any human induced change to improved or unimproved real estate, including but not limited to construction, installation or expansion of a building or other structure, land division, drilling, and site alteration such as that due to land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking or storage, excavation or clearing.

426-3.3 "Public Works Project" means any land development conducted or financed by a local, state or federal governmental body.

426-4 Erosion Control Plan

No preliminary plat, site plan, development permit, building permit or public works project shall be approved unless the conditions of the plat, permit or plan approval include an erosion control plan containing methods and/or interim facilities to be constructed or used concurrently with land development and to be operated during construction to control the discharge of sediment in the stormwater runoff. The erosion control plan shall be prepared in conformance with the Washington County Erosion Control Plans Technical Guidance Book, January 1991, or its successor.

426-5 Review

426-5.1 The erosion control plan shall be reviewed in conjunction with the requested development approval. If the development necessitating an erosion control plan is

exempted by Section 201-2 from the requirement to obtain a development permit, the approval of the erosion control plan shall be a Type I approval.

426-5.2 The Department may defer submittal of an erosion control plan for a land division if no construction or physical change to the land is to be commenced and the land division would not otherwise interfere with future compliance with this section. Approval shall be conditioned to require an approved erosion control plan prior to any physical change or construction.

426-6 Compliance

Failure to obtain or implement an approved erosion control plan shall be deemed a violation of this ordinance and may be enforced by citation or revocation of the relevant permit. Compliance with this section is required in addition to, and not in lieu of, Section 410, Grading and Drainage.