

## **Amendments to the Development Code**

Effective May 18, 1990, the Development Code replaced the former Zoning Ordinance and Land Division Ordinance to govern land use activities in Benton County.

The legislative history of every section of the Code is listed in brackets at the end of each section. For example:

89.005 Purpose. This Chapter is intended to encourage continued use, rehabilitation, and preservation of significant historic sites and structures. [Ord 90-0069, Ord 91-0080]

This section appears at the beginning of Chapter 89, Historic Preservation. This section was originally adopted in 1990 by Ordinance No. 90-0069. It was revised in 1991 by Ordinance No. 91-0080.

<b><u>Ord. No.</u></b>	<b><u>Eff. Date</u></b>	<b><u>File No.</u></b>	<b><u>Chapters Amended</u></b>
90-0069	5/18/90	L-90-1	Adoption of the Development Code (50-99)
90-0073	8/11/90	L-90-2	Rezone Marys River Estates from RR-2 to RR-5
90-0074	8/11/90	L-90-4	Expand Monroe UGB
90-0075	8/11/90	L-90-5	55
90-0077	10/5/90	L-90-7	76
91-0079	2/8/91	L-80-9	50
91-0080	4/27/91	L-90-12	87, 89
91-0081	4/27/91	L-90-12	Apply Sensitive Fish & Wildlife Habitat Overlay Zone to two sites
91-0082	2/22/91	L-80-11	50, 51, 64, 65
91-0083	3/8/91	L-90-10	Apply Wetland Overlay Zone to Jackson-Frazier Wetland
92-0092	7/17/92	L-91-1	51, 55, 61, 63, 64, 65, 68, 72, 76, 78, 79, 83, 86, 91, 94, 95, 96, 97, 98, 99
92-0093	11/7/92	PC-92-5	78
92-0094	11/7/92	PC-92-5	Apply Public Zone with Use Overlay to Peavy Arboretum
93-0096	3/5/93	L-91-1	51
93-0097	3/5/93	L-91-1	64, 91, 95
93-0098	5/21/93	L-90-12	55, 87
94-0103	3/18/94	L-92-1	60
94-0104	3/18/94	L-93-1	51, 63, 64, 82, 91
94-0108	11/6/94	L-94-4 & 5	55, 56
95-0114	11/4/95	L-95-1	60
96-0117	8/12/96	L-95-3	51
96-0118	8/12/96	L-95-3	51, 55, 60, 63, 64, 65, 68, 69, 72, 73, 76, 78, 79, 83, 85, 89, 91, 94, 95, 97, 98, 99
96-0119	12/13/96	L-96-3	91
97-0131	12/12/97	L-96-2	51, 63, 64, 79, 91 and repeal 82
98-0134	3/20/98	L-97-3	51, 60, 64

<b><u>Ord. No.</u></b>	<b><u>Eff. Date</u></b>	<b><u>File No.</u></b>	<b><u>Chapters Amended</u></b>
98-0136	07/10/98	L-98-01	63, 64
98-0141	11/6/98	L-97-4	57, 64, 95, 97, 98, 100
99-0146	4/8/99	L-98-01	55, 64, 72, 79, 91
99-0147	4/8/99		52, 79
99-0148	7/8/99	L-98-03	
99-0154	2/10/2000	L-99-05	100
2000-0157	5/18/2000	L-99-06	51, 55, 83
2000-0161	10/5/2000	L-00-02	51, 53, 89
2001-0168	5/24/2001	L-01-02	100
2000-0163	7/19/2001	L-00-01	53, 55
2001-0172	8/30/2001	L-01-03	72
2001-0174	11/1/2001	L-01-01	51, 55, 60
2003-0184	6/23/2003	PC-03-01	68
2004-0196	7/8/2004	L-03-02	51, 53
2005-0209	10/6/2005	L-04-01	51, 57, 64, 72, 78, 83, 88, 100 (Corvallis Natural Features Program, Hazards Element)
2005-0210	10/6/2005	L-04-01	51, 57, 64, 72, 78, 88, 100 (Corvallis Natural Features Program, Riparian and Wetland Element)
2005-0211	11/25/2005	L-04-01	64, 88, 100 (Corvallis Natural Features Program, Significant Vegetation Element)
2006-0213	6/29/2006	LU-06-023	72
2006-0214	9/7/2006	LU-05-090	51, 53, 55, 60, 85, 94, and 99
2007-0222	8/9/2007	LU-06-058	63, 68, 70, 72, 74, 98
2007-0223	10/2/2007	LU-07-070	95, 97, 99
2007-0224	11/15/2007	LU-07-070	95, 97, 99
2008-0226	7/10/2008	LU-05-048	66 (New), 75 (New)
2009-0232	12/24/2009	LU-08-075	51, 53, 55, 60, 94, 97
2010-0235	7/1/2010	LU-09-085	76
2009-0233	6/2/2011	LU-08-096	51, 83, 94, 95, 97 (Floodplain Code Revision & Map Adoption)
2011-0240	7/1/2011	LU-10-052	97, 99, 100 (Stormwater Management)
2012-0244	3/29/2012	LU-11-053	64, 99, 100
2012-0247	9/20/2012	LU-11-052	51, 81, 91 (Special Use)
2012-0248	9/20/2012	LU-12-011	81.100 (Special Use - Children's Farm Home subzone)
2012-0249	12/20/2012	LU-12-008	81 (Special Use - Airport Industrial Park)
2013-0253	8/15/2013	LU-13-013	87 (Fender's Blue Butterfly Overlay), 51, 95

<b><u>Ord. No.</u></b>	<b><u>Eff. Date</u></b>	<b><u>File No.</u></b>	<b><u>Chapters Amended</u></b>
2013-0255	11/14/2013	LU-13-054	83 (Floodplain Code Revision & Revised Panel Adoption)
2014-0264	1/29/2015	LU-14-075	64 (Community Gathering Facilities)
2015-0265	2/19/2015	LU-14-077	76 (Use Overlay Zone)
2015-0267	7/16/2015	LU-15-018	53, 95
2015-0268	8/6/2015	LU-15-016	55
2015-0269	9/3/2015	LU-15-018	51
2015-0270	12/24/2015	LU-15-052	51, 55 (Recreational Marijuana)
2015-0271	12/24/2015	LU-15-052	66, 70, 72, 74, 75, 76, 78, 91 (Recreational Marijuana)
2016-0276	12/08/2016	LU-16-057	83 (Floodplain Code Revision & Revised Panel Adoption)
2017-0278	03/23/2017	LU-16-082	81 (Special Use – Airport Industrial Park)
2017-0282	12/21/2017	LU-15-047	60
2017-0283	12/21/2017	LU-17-012	78 (Oak Grove School)
2018-0285	06/30/2018	LU-18-016	51, 63, 64, 65, 91 (Accessory Dwelling Units)
2018-0286	07/19/2018	LU-18-016	51, 63, 64, 65, 91 (Accessory Dwelling Units)
2018-0289	01/03/2019	LU-17-022	51, 94, 95, 97
2020-0297	08/06/2020	LU-18-064	53, 55, 60, 91, 94 (Mandatory Changes)
2021-0304	10/07/2021	LU-21-032	51, 57, 83, 88, 94, 95, 97, 99 (Mandatory Floodplain Code Revision)
2022-0313	12/15/2022	LU-22-048	51, 91 (Psilocybin)

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## **Chapter 50**

### **Benton County Comprehensive Plan**

#### **50.005 Comprehensive Plans Incorporated by Reference.**

- (1) The Benton County Comprehensive Plan, including the Comprehensive Plan Map, is hereby incorporated by reference into the Benton County Code.
- (2) The Comprehensive Plans of the Cities of Adair Village, Albany, Corvallis, Monroe and Philomath are hereby adopted as part of the Benton County Comprehensive Plan for the respective areas between the urban growth boundary and the city limits of the above mentioned cities. [Ord 90-0069]

**50.010 Purpose.** The Comprehensive Plan is the official policy guide for decisions about growth, development, and conservation of natural resources in Benton County. [Ord 90-0069]

**50.015 Relationship to Development Code.** The policies of the Comprehensive Plan shall serve as the basis for developing the implementing regulations of the Development Code. The policies of the Comprehensive Plan are not implementing regulations and shall not be directly applied to individual applications except as provided by the Development Code. When the interpretation of a particular Development Code provision is in doubt, the Comprehensive Plan shall be referred to for policy guidance. [Ord 90-0069]

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# Chapter 51

## Development Code Administration

**51.005 Title.** BCC Chapters 51 to 100 shall be known as the Benton County Development Code. [Ord 90-0069]

**51.010 Scope. The Development Code is intended to implement the Benton County Comprehensive Plan.** All amendments to the Development Code shall comply with the Comprehensive Plan. Land within unincorporated Benton County may be used and developed only as provided by the Development Code. The Development Code is part of the Benton County Code, and unless otherwise provided, is subject to applicable general regulations of the Benton County Code. [Ord 90-0069]

**51.015 Private Land Use Restrictions.** There may be private land use restrictions (e.g. Covenants, Conditions and Restrictions) recorded in the public records of Benton County which limit or impair a property owner's ability to utilize their property. Nothing in the Benton County Development Code shall be interpreted as superseding or limiting the enforcement of such private land use restrictions. Benton County will not enforce and will not interpret private land use restrictions. Private land use restrictions are private legal matters which may be enforced in appropriate legal proceedings in the courts of this state. [Ord 97-0131]

**51.015 Transition to the Development Code.**

- (1) All applications filed prior to the effective date of this code shall be processed pursuant to Ordinance 7 or 26. [Ord 97-0131]
- (2) All applications or permits approved pursuant to Ordinance 7 or 26 shall continue in full force and effect unless the approved use becomes nonconforming as a result of the adoption of the Development Code. If the use has become nonconforming, an approved application or permit shall continue in full force and effect if the use has been established or if the property owner qualifies for a vested right pursuant to BCC 53.335. Where a condition of approval specifies that a subsequent land use application be filed for review, or when an applicant wishes to change a condition or term of a prior approval, such application shall be processed in accordance with the provisions of the this code. [Ord 90-0069]

**51.020 Definitions.** As used in BCC Chapters 51 to 100:

- (1) "Access" means the method of ingress and egress.
- (2) "Accessory dwelling unit" means an interior, attached, or detached residential structure that is used in connection with or that is accessory to a single-family dwelling. Standards for accessory dwelling units are found in BCC Section 91.050. [Ord 2018-0285; Ord 2018-0286]
- (3) "Accessory use or structure" means a use or structure which is incidental and subordinate to the principal use or structure.
- (4) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. Also referred to as the "100 year flood". Designation on Flood Insurance Rate Maps always begins with the letter "A".
- (5) "Base flood elevation" means the height of the flood waters during a base flood at points along the water course, expressed in feet above mean sea level.
- (6) "Big game" means deer and elk.
- (7) "Cemetery" means a place used for the permanent interment of human remains.
- (8) "Church" means a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship. When a church is allowed on real property pursuant to the Development Code, also allowed shall be the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child

care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education. [Ord 2015- 0269]

- (9) "Day care center" means an establishment providing specialized group care for thirteen or more children.
- (10) "Driveway" means access to private land.
- (11) "Duplex" means two dwelling units connected by an architectural feature and having at least one structural wall on one unit located within 20 feet of a structural wall on the other unit.
- (12) "Dwelling" means a single-family dwelling, as further defined below for purposes of this Development Code. "Dwelling" includes a manufactured dwelling unless otherwise provided by this code. "Dwelling" does not mean a tent, tepee, yurt, hotel, motel, recreational vehicle or bus.

The land use category of "dwelling" is limited to a structure or structures, designed and occupied as a single housekeeping unit by an individual, two or more related persons (including dependents), or a group of not more than five unrelated persons. This type of use is distinct from a short-term rental use (defined as rental of a dwelling for less than a one month period) which is considered a home occupation and allowed subject to the applicable standards for home occupations in this code. Use of a structure or a portion of a structure as a second, independent housekeeping unit is allowed only when specifically authorized pursuant to this Development Code, such as for a duplex, accessory dwelling unit, medical hardship dwelling, farm-help dwelling, or other approved use. However, if the occupants described above occupy a primary dwelling structure and accessory living area in a separate structure on the same property, share a single kitchen, and live together as a household, the two structures would be considered components of one dwelling.

A separate structure containing a kitchen, as defined below, in combination with a bathroom and a bedroom or a room that could function as a bedroom, is allowed only when authorized as an additional dwelling or accessory dwelling unit pursuant to the Development Code.

Within a dwelling, a second kitchen, as defined below, is allowed only when authorized as a duplex, accessory dwelling unit, or additional dwelling in those zones that allow such uses, or when the dwelling is organized such that neither kitchen can support a second, separate housekeeping unit; for example, the kitchen may not be capable of being shut off from the rest of the dwelling in a way that would isolate a combination of kitchen, bathroom, bedroom or a room that could function as a bedroom, and outside entrance.

As used in this definition, "kitchen" means a room or area containing a combination of:

- (a) Wash basin designed to be used for washing and food preparation; and
  - (b) Range, stove, microwave or other cooking facility, or 220 wiring, or gas line, except as to service a facility other than a cooking facility. [Ord 2018-0285; Ord 2018-0286]
- (13) "Dwelling, multi-family" means a building used by two or more families living independently of each other in separate dwelling units.
  - (14) "Family" means an individual, two or more related persons (including dependents), or a group of not more than five unrelated persons living together as a housekeeping unit. [Ord 2018-0285; Ord 2018-0286]
  - (15) "Farm use" means the following:
    - (a) In only the Exclusive Farm Use, Forest Conservation, and Multi-Purpose Agriculture zones, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or produce of, livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Marijuana, grown commercially pursuant to a license issued by the State of Oregon, is a crop. In the Exclusive Farm Use and Multi-Purpose Agriculture zones only,

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psilocybin-producing fungi, grown pursuant to a license from the State of Oregon, is a crop. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and other animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees defined in ORS 215.203 (3) or land described in ORS 321.267 (3) or 321.824. A wholesale or retail plant nursery is considered horticultural use and therefore is allowed under this definition. [Ord 2015-0270; Ord 2022-0313]

- (b) In zones other than Exclusive Farm Use, Forest Conservation and Multi-Purpose Agriculture, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops, or by the feeding, breeding, management and sale of livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry, or any combination thereof. "Farm Use" includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. It does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees or for hardwood species marketable as fiber for manufacturing paper products as described in ORS 321.267(3) or 321.824. Farm use shall be appropriate for the continuation of existing, or the promotion of new, commercial agriculture enterprise in the area.

"Farm use" in zones other than Exclusive Farm Use, Forest Conservation and Multi-Purpose Agriculture is distinguished from the 51.020(15)(a) definition by the exclusion of:

- (A) "stabling or training equines";
- (B) "bird and other animal species that are under the jurisdiction of the State Fish and Wildlife Commission";
- (C) "on-site construction and maintenance of equipment and facilities" used for farm use; and
- (D) "marijuana, grown commercially pursuant to a license issued by the State of Oregon," as a farm crop.
- (E) "psilocybin-producing fungi, grown pursuant to a license from the State of Oregon," as a farm crop.

[Ord 2015-0270; Ord 2022-0313]

- (c) As used in the definition of "farm use",
- (A) "Current employment" of land for farm use includes:
    - (i) Farmland, the operation or use of which is subject to any farm-related government program;
    - (ii) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;
    - (iii) Land planted in orchards or other perennials, other than land specified in subparagraph (iv) of this paragraph, prior to maturity;

- (iv) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;
  - (v) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;
  - (vi) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);
  - (vii) Water impoundments lying in or adjacent to and in common ownership with farm use land;
  - (viii) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;
  - (ix) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;
  - (x) Any land described under ORS 321.267 (3) or 321.824 (3); and
  - (xi) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:
    1. Only the crops of the landowner are being processed;
    2. The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or
    3. The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.
- (B) "Accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.
- (C) "Cultured Christmas trees" means trees:
- (i) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;
  - (ii) Of a marketable species;
  - (iii) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and
  - (iv) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation. {ORS 215.203}
- (D) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products; and



- (E) "Products or by-products raised on such land" means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.

[Ord. 2001-0174, Ord 2006-0214, Ord 2015-0269, Ord 2015-0270]

- (16) "Feed lot" means a premise where six or more cattle or pigs are kept within a confined area of less than five (5) acres such that a nuisance from noise, sound, or odor occurs.
- (17) "Fire break" means a minimum area of thirty (30) feet around a dwelling cleared of vegetation except for ornamental shrubbery, sod, single trees or similar plants used for ground cover. Trees and large ground cover shall be placed to prevent rapid movement of a fire. If slopes are greater than thirty percent (30%), "fire break" means a minimum of fifty (50) feet.
- (18) "Flag lot" means a parcel or lot connected by means of a narrow strip of land to a road right-of-way.
- (19) "Flood hazard" means a risk to life or property caused by flooding.
- (20) "Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures for the reduction or elimination of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.
- (21) "Floodplain" means a land area capable of being inundated by water during a base flood.
- (22) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as the "Regulatory Floodway". Refer to the diagram at the end of Chapter 83. Note that the "Floodway" within the Corvallis Urban Growth Boundary is based on a 0.2-foot increase in the water surface elevation (rather than a one-foot increase) as defined in BCC 83.110(3)(a).
- (23) "Floodway fringe" means that portion of the floodplain of a river or other watercourse that lies landward of the floodway and serves as a temporary floodwater storage area during the base flood.
- (24) "Forest use" means:
- (a) The production of trees and the processing of forest products;
  - (b) Open space, buffers from noise, and visual separation of conflicting uses;
  - (c) Watershed protection and wildlife and fisheries habitat;
  - (d) Soil protection from wind and water;
  - (e) Maintenance of clean air and water;
  - (f) Outdoor recreational activities and related support services, and wilderness values compatible with these uses; or
  - (g) Grazing land for livestock.
- (25) "Frontage" means the boundary of a parcel or lot abutting a road.
- (26) "Functional classification" means the designation of a road based upon the level of service intended, as specified by the Transportation Management Plan incorporated in the Benton County Comprehensive Plan. Private roads do not have a functional classification, but are considered local roads.
- (27) "Home occupation" means a business carried on within a dwelling or an accessory structure where the business is secondary to the use of the property as a residence.
- (28) "Junkyard" means any lot or premise where there is accumulated eight or more motor vehicles in any condition, or an equivalent volume of salvaged materials or solid waste. "Junkyard" includes an auto wrecking yard, garbage dump, junk dealer, and a scrap metal processing facility.

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- (29) "Kennel" means one of the following:
- (a) "Commercial kennel" means a premise on which five or more adult dogs and/or cats are kept for breeding purposes for profit and/or where five or more adult dogs and/or cats are boarded for profit. A commercial kennel established for breeding purposes is characterized as a business venture with the primary purpose to produce and sell dogs or cats. An adult dog or cat is one that has reached the age of six months.
  - (b) "Hobby kennel" means a premise on which five or more adult dogs and/or cats are kept for purposes other than those described for a commercial kennel. These purposes include show, hunting, stock raising, or other personal use. An adult dog or cat is one that has reached the age of six months.
- (30) "Land division" means a subdivision or land partition where a new lot or parcel is created.
- (31) "Landfill" means land used for the disposal of solid wastes, and may include the removal and classification of recycled materials.
- (32) "Legislative land use action" means an ordinance amendment to the policies, procedures, standards or criteria of the Comprehensive Plan or Development Code which does not apply to specifically identified persons or properties, except insofar as persons or properties are generally affected by reason of the change in such policies, procedures, standards or criteria.
- (33) "Limited Land Use Decision" means a final decision or determination by a local government pertaining to a site within an urban growth boundary which concerns:
- (a) The approval or denial of a subdivision or partition, as described in ORS chapter 92;
  - (b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.
- (34) "Lot" means a unit of land created by a subdivision of land approved by Benton County and filed with the Benton County Records and Elections Department.
- (35) "Major stream" means that stretch of a creek designated as a flood hazard area on the Flood Insurance Rate Maps.
- (36) "Manufactured dwelling" means:
- (a) A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962.
  - (b) A mobile house, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.
  - (c) A manufactured dwelling, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction.
- (37) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. "Marijuana" does not include industrial hemp, as defined in ORS 571.300.
- (38) "Marijuana crop" means marijuana grown commercially pursuant to a license issued by the State of Oregon.



- (39) “Ministerial decision” means an action of the Community Development Department to approve or deny a request based on nondiscretionary application of clear and objective review standards. Such action may include imposing clear and objective conditions of approval. Examples of typical ministerial decisions include, but are not limited to, property line adjustments and the zoning compliance determination for building permits when such reviews involve only clear and objective standards.
- (40) "Minor stream" means that stretch of a creek which is not designated as a flood hazard area on the Flood Insurance Rate Maps.
- (41) "Mobile home park or manufactured dwelling park" means a property designed for rental of four (4) or more spaces for mobile homes or manufactured dwellings.
- (42) “Natural Area” means an area open to the public for passive outdoor recreation and containing only minor and impermanent improvements or alterations of the landscape, such as unpaved pedestrian trails, portable toilet facilities, portable picnic tables. Permanent alterations shall be limited to a parking lot appropriately sized for the expected number of park users, interpretive signs and informational kiosks. “Natural Area” is distinguished from “Park, Developed” by the level and type of landscape alteration.
- (43) "Nonfarm use" means any use which is not a "farm use" as defined by this code.
- (44) "Open space" means lands which:
- (a) Conserve or enhance natural or scenic resources;
  - (b) Protect air or streams or water supply;
  - (c) Promote conservation of soils or wetlands;
  - (d) Conserve landscaped areas, such as public or private golf courses, which reduce air pollution and enhance the value of neighboring property;
  - (e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries;
  - (f) Enhance recreational opportunities;
  - (g) Preserve historic sites; or
  - (h) Promote orderly urban or suburban development.
- (45) "Ordinary high water line" means the top of the bank of a stream or river.
- (46) "Owner" means the person on record with the Benton County Assessor as owning real property, or who is a contract purchaser of record of real property.
- (47) "Parcel" means a single unit of land conforming with all land development regulations in effect on the date the parcel was created. “Parcel” also refers to a unit of land legally created prior to partition ordinances and recognized as a distinct unit of land by the County pursuant to ORS 92.017. “Parcel does not include a unit of land created solely to establish a separate tax account. “Parcel” does not include “lot” as defined under BCC 51.020.
- (a) Except as provided in (b), a parcel is considered legally created and will be recognized as a legally created unit of land if:
    - (A) The creation of the parcel was approved by the County pursuant to County zoning and land division ordinances in effect at the time of the partitioning; or
    - (B) The creation of the parcel was by one of the following listed methods and the creation of the parcel was in accordance with applicable laws in effect at the time:
      - (i) The parcel is shown on a survey filed with the State of Oregon prior to October 5, 1973; or
      - (ii) The parcel was described in a land sales contract entered into prior to November 28,

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1975; or

(iii) The parcel was described in a deed recorded prior to November 28, 1975.

- (b) Any legally created parcel as described in (a) above will cease to be recognized by the County as a distinct unit of land once it has been reconfigured, altered, or consolidated into a larger unit of land by approval or recording of any one or more of the following:
  - (A) partition plat;
  - (B) subdivision plat;
  - (C) deed with a single unified metes and bounds legal description;
  - (D) deed expressly stating an intent to unify separately described parcels;
  - (E) covenant expressly stating an intent to unify separately described parcels.
- (c) Units of land that do not meet the definition of a legally created parcel as provided above may become legally created parcels upon complying with the standards of BCC 94.160 and ORS 92.176 or BCC 94.300. [Ord 2018-0289]
- (d) A legally created unit of land does not mean a buildable unit of land. Zoning and other development restrictions may exist which require the combination of lots or parcels in order for such parcels to be developed. [Ord 96-0117, Ord 96-0118]
- (48) "Park, Developed" means an area open to the public for active or passive outdoor recreation and containing structures, other improvements, or alterations of the landscape, including but not limited to picnic shelters, permanent restrooms, playground equipment, and sports fields. "Developed Park" is distinguished from "Natural Area" by the level and type of landscape alteration.
- (49) "Partition land" means to divide land into two or three parcels or lots within a calendar year. "Partition land" does not include a division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or an adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance; or a sale or grant by a person to a public agency or public body for state highway, county road, or other right-of-way purposes, provided that such road or right-of-way complies with the applicable comprehensive plan and other provisions of this code. However, any property divided by the sale or grant of property for state highway, county road, or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.
- (50) "Planning Official" means the Director of the Community Development Department or the Director's designee.
- (51) "Property line" means the exterior boundary of a lot or parcel. For contiguous lots or parcels held in common ownership and combined for development purposes, the property line for purposes of setbacks shall be the exterior boundary of the combined lots or parcels. Unless otherwise specified, setbacks set forth in this code shall be measured to the property line.
- (52) "Property line adjustment" means the relocation of a common boundary where an additional unit of land is not created.
- (53) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has more than three (3) service connections or supplies water to a public or commercial establishment which operates a total of at least sixty (60) days per year, and which is used by ten (10) or more individuals per day or is a facility licensed by the Health Division of the Oregon Department of Human Services. A public water system is either a "community water system" or a "non-community water system".
  - (a) "Community water system" means a public water system which has fifteen (15) or more service

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connections used by year-round residents, or which regularly serves twenty-five (25) or more year-round residents;

- (b) "Non-community water system" means a public water system that is not a community water system.
- (54) "Quasi-judicial land use action" is land use decision made pursuant to existing criteria regarding specifically identified persons or properties.
- (55) "Recreational vehicle" means a vacation trailer or other unit which is designed for human occupancy.
- (56) "Replat" means the act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.
- (57) "Residential facility" means a facility licensed by or under the authority of the Oregon Department of Human Services under ORS 443.400 to 443.460 which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet Oregon Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.
- (58) "Residential home" means a home licensed by or under the authority of the Oregon Department of Human Services under ORS 443.400 to 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet Oregon Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.
- (59) "Resource zone" means the Exclusive Farm Use, Multi-Purpose Agriculture, Floodplain Agriculture, Forest Conservation, and Open Space Zones.
- (60) "Restoration" means the process of accurately recovering the form and details of the property and its setting as they appeared at a particular period of time by means of removal of later improvements, or by the replacement of missing earlier features.
- (61) "Right-of-way" means the area between the boundary lines of a road.
- (62) "Road" means the entire right-of-way of any public or private way that provides access for persons to property.
- (a) "Private road" means a road that has not been dedicated for public use and in which no rights have accrued to the public.
- (b) "Public road" means a road dedicated to the public, or a road which the public has accrued a right to use.
- (c) "County road" means a public road that has been accepted by the Board of Commissioners into the County road maintenance system.
- (63) "Roadway" means the road surface improved for use by vehicular traffic.
- (64) "Sanitary landfill" means land used for the disposal of solid wastes in accordance with State and County requirements.
- (65) "School" means a public or private place or institution for teaching, instructing, educating, and learning; including elementary, secondary, college or university levels, and trade schools; including their accessory structures.
- (66) "Seasonal farm-worker" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in production of farm products or planting, cultivating or harvesting

of seasonal agricultural crops or in forestation or reforestation of lands, including by not limited to, the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

- (67) "Seasonal farm-worker housing" means housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months a year.
- (68) "Secondary road" means a road which is not required to meet County urban or rural road standards.
- (69) "Setback" means the minimum allowable horizontal distance from a given line of reference (usually a property line) to the nearest vertical wall of a structure.
- (70) "Sign face" means the entire surface area of a sign upon which a message can be placed.
  - (a) Where a sign has two display faces back to back, the area of only one face shall be considered the sign face. If one face is larger, the area of the larger sign face shall be considered the sign face. The supporting structure or bracing of a sign shall not be counted as part of the sign face, unless such structure or bracing is made a part of the sign's message.
  - (b) Where a sign has more than one display face, all areas which are viewed simultaneously shall be considered the sign face of a single sign. All faces displayed on the same means of support, such as a single pole, shall be considered a single sign.
- (71) "Structural alterations" means a change in the supporting members of a structure, such as bearing walls, columns, beams, girders, or foundations.
- (72) "Structure height" means the vertical distance from the average finished grade to the highest point of a roof. "Average finished grade" means the midpoint between the highest and lowest finished grades adjacent to the building.
- (73) "Subdivide land" means to divide land into four or more lots within a calendar year.
- (74) "Subdivision" means either the act of subdividing land or a tract of land subdivided.
- (75) "Surface mining" means the extraction or processing of mineral or aggregate resources.
- (76) "Tract" means, for the purposes of the Exclusive Farm Use and Forest Conservation zones and Chapter 100, one or more contiguous lots or parcels in the same ownership. [Ord 94-0108; Ord 2001-0174]
- (77) "Urban fringe" means that area between an urban growth boundary and the city limits of an incorporated city.
- (78) "Water dependent use" means a use or activity which can be carried out only on or near water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water. "Water dependent use" does not include effluent treatment and/or disposal.
- (79) "Water related use" means a use which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water dependent land or waterway use. "Water related use" does not include a dwelling, parking lot, spoil dump site, road, restaurant, business, factory, or trailer park.
- (80) "Wetlands" means those 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.
- (81) "Winery" means a structure where grapes or other produce may be processed and converted to wine, bottled, blended, stored and sold. "Winery" includes a tasting room open to the public where wine may be sampled and purchased and where incidental wine related paraphernalia may be sold.

[Ord 7, Ord 26, Ord 90-0069, Ord 92-0092, Ord 93-0096, Ord 96-0117, Ord 96-0118, Ord 98-0134, Ord 2005-0209, Ord 2005-0210, Ord 2006-0214, Ord 2009-0233, Ord 2015-0269; Ord 2018-0285; Ord 2018-0286, Ord

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**51.100 Designated Primary Zones.** The unincorporated portions of Benton County are divided into primary zones which establish the requirements for the use of land in a given area. Primary zones in Benton County are:

- (1) Exclusive Farm Use (EFU)
- (2) Multi-Purpose Agriculture (MPA)
- (3) Floodplain Agriculture (FPA)
- (4) Forest Conservation (FC)
- (5) Open Space (OS)
- (6) Rural Residential (RR)
- (7) Urban Residential (UR)
- (8) Urban Commercial (UC)
- (9) Rural Commercial (RC)
- (10) Urban Industrial (UI)
- (11) Rural Industrial (RI)
- (12) Agricultural Industrial (AI)
- (13) Landfill Site (LS)
- (14) Public (P)
- (15) Rural Service Center (RSC)
- (16) Philomath Low-Density Residential (PR-1)
- (17) Philomath Medium-Density Residential (PR-2)
- (18) Philomath High-Density Residential (PR-3)
- (19) Philomath General Commercial (PC-2)
- (20) Philomath Light Industrial (PLI)
- (21) Philomath Heavy Industrial (PHI)
- (22) Village Residential (VR)
- (23) Village Commercial (VC)
- (24) Special Use (SU)

[Ord 90-0069, Ord 2009-0233; Ord.2012-0247; Ord 2013-0253]

**51.105 Overlay Zones.** An overlay zone may be applied to any portion of a primary zone in order to establish special requirements in addition to those required by the primary zone. Overlay zones in Benton County are:

- (1) Floodplain Management (/FP) The depiction of the Floodplain Management Overlay Zone on the Official Zoning Map is approximate; the official boundaries of this zone are shown on the Flood Insurance Rate Maps provided by the Federal Emergency Management Agency.
- (2) Greenway Management (/GM) The depiction of the Greenway Management Overlay Zone on the Official Zoning Map is approximate; the official boundaries of this zone are shown on the adopted Willamette River Greenway maps located in the Planning Division.
- (3) Flexible Industrial (/FI)



- (4) Airport (/A) The depiction of the Airport Overlay Zone on the Official Zoning Map is derived from the boundaries described in Chapter 86. In the event of a conflict between these, the text description in Chapter 86 shall prevail.
- (5) Goal 5 Resources
  - (a) Wetland (/W)
  - (b) Surface Mining (/SM)
  - (c) Sensitive Fish and Wildlife Habitat (/FW)
  - (d) Fender’s Blue Butterfly (/FB)
- (6) Use (/U)
- (7) Natural Features Overlays
  - (a) Natural Hazards
  - (b) Natural Resource

[Ord 97-0131; Ord 2004-0196; Ord 2006-0214, Ord 2009-0233; Ord 2013-0253]

**51.110 Official Zoning Map.**

- (1) The Official Zoning Map shall divide Benton County into primary and overlay zones and shall be consistent with the Benton County Comprehensive Plan Map and adopted City Comprehensive Plan Maps. The boundaries of the zones shown on the Official Zoning Map may be modified in accordance with the procedures for a zone change pursuant to this code. Annexation of territory to a City shall result in automatic amendment of the zoning map as of the effective date of annexation. [Ord 90-0069]
- (2) The Official Zoning Map shall be maintained by the Planning Official in the offices of the Development Department. The Official Zoning Map adopted with an effective date of July 8, 2004, exists in official form as an electronic map layer within the Benton County geographic information system at a scale of 1:24,000.
  - (a) The official copy of the electronic version of the zoning map shall be recorded onto permanent media to ensure the electronic information is protected.
  - (b) When the official zoning map is amended by Ordinance, the Planning Official shall cause the changes to be made to the electronic version of the zoning map, and shall cause the electronic map’s metadata to be annotated with the date and type of change and the ordinance number.
  - (c) Any zoning map or map containing data from the official zoning map shall be annotated with the date of the most recent revision of the zoning map by ordinance, and shall state that the map data is valid at a maximum scale of 1:24,000.
- (3) The Official Zoning Map adopted with an effective date of July 8, 2004, is intended to be consistent with the June 2, 1982 Zoning Map. The exceptions are those zone change requests adopted by ordinance after June 2, 1982. The owner of any property, the zoning of which was inadvertently changed by the conversion from the 1982 Zoning Map to the 2004 Zoning Map, may obtain correction of the error through the procedure in BCC 53.530.
- (4) Interpretation of the zoning map shall comply with the following:
  - (a) Zone boundaries are generally intended to coincide with discernable geographic features or property lines. In cases where a zone line crosses a lot or parcel without reference to a specific landmark (such as a road or stream), it may be necessary to consult the record of hearings that led to adoption of the Zoning Map, or other relevant information, in order to determine the precise location of the zone line.
  - (b) Zone boundaries that are indicated as approximately following roads, railroad lines, streams or

other water bodies shall be construed to follow the centerlines of these entities.

- (c) Zone boundaries that are indicated as approximately following city limits, urban growth boundaries, or property lines shall be construed to follow those lines.
  - (d) Boundaries indicated as parallel to or extensions of the features listed above shall be so construed.
  - (e) Where a water body, such as a river, changes location through annual erosion or accretion (i.e. the gradual and imperceptible removal or addition of alluvial material), any coincident zone line shall be interpreted as moving with the centerline of that body of water. Where a water body changes location through avulsion (i.e. the sudden and visible loss or addition to land, or the sudden change in the bed or course of the stream), any coincident zone line shall be interpreted as remaining in the location of the water body prior to the avulsion.
- (5) Where a right-of-way is vacated, the zone requirements applicable to the property of which the vacated property becomes a part shall apply to the vacated property.
  - (6) Errors in the Official Zoning Map shall be resolved by means of the procedure in BCC 53.530.
  - (7) Refinement of the zoning map to improve consistency with the interpretation standards of subsection (4) may be effected under the direction of the Planning Official. [Ord 2004-0196]

## **THE PLANNING OFFICIAL**

**51.205 Duties and Powers of the Planning Official.** The Planning Official is responsible for the administration of the Development Code. In carrying out these duties, the Planning Official shall have the following powers:

- (1) The Planning Official shall provide the official interpretation of the Comprehensive Plan and Development Code, including the Zoning Map and Comprehensive Plan Map. Any member of the public may apply for a Planning Official's Interpretation of provisions of the Comprehensive Plan or Development Code or their application to a specific property, project, or issue. The Planning Official's Interpretation is an administrative land use action. The Interpretation shall be based on the Benton County Comprehensive Plan, the purpose and intent of the applicable code chapter(s), and any other information deemed relevant by the Planning Official. The interpretation cannot constitute a legislative act effectively amending the code or Comprehensive Plan. Notice of the decision shall be published in a newspaper of general circulation pursuant to BCC 51.625(2) and notice shall be provided to the applicant and any member of the public who has requested in writing to the Community Development Department within the past year to be notified of land use actions regarding the subject matter of the Interpretation. Additionally, for questions of interpretation pertaining to specific properties or land areas, notice shall be provided to owners of neighboring properties as specified in BCC 51.610(1)(a) through (c). The decision is subject to appeal under the provisions of BCC 51.805 through 51.840. The application for an interpretation may be referred to the Planning Commission at the discretion of the Planning Official. If referred, the Planning Commission will consider the matter as a quasi-judicial land use action at a public hearing pursuant to BCC 51.705 through 51.725.
- (2) The Planning Official may approve a use not specifically listed in the Development Code in any zone, provided that the use is substantially similar in character, scale, and impact to permitted uses in the zone, and is compatible with the purpose of the zone. However, if the use in question is specifically listed in another zone, other than Chapter 81 (Special Use Zone), the Planning Official shall not approve the use through this procedure. [Ord. 2012-0247]
- (3) The Planning Official, and any employee of Benton County, may enter upon land subject to a land use application or to enforce any provision of this code to make examinations and surveys in the performance of their functions.

- (4) The Planning Official shall review and decide all land use applications, except as otherwise specifically provided by this code. The Planning Official may refer any application to the Planning Commission for a public hearing.

[Ord 90-0069; Ord 2000-0161; Ord 2004-0196]

## **CITIZEN ADVISORY COMMITTEES**

**51.305 Citizen Advisory Committees Established.** The Board of Commissioners may establish Citizen Advisory Committees (CAC) in unincorporated areas of Benton County. [Ord 90-0069]

**51.310 Purpose.** The purpose of a CAC is to:

- (1) Encourage participation of citizens in all phases of the land use planning process and other aspects of County government that affect their area;
- (2) Increase communication between citizens and elected and appointed County officials;
- (3) Obtain input from citizens in a CAC area on land use legislation and actions affecting their area; and
- (4) Assist the County and educate citizens regarding the technical and legal aspects of land use planning. [Ord 90-0069]

**51.315 Participation.** Participation in the activities of a CAC is open to any resident, property owner, or person operating or leasing a farm or business in the CAC area. CAC meetings shall be open to anyone who wishes to attend. [Ord 90-0069]

**51.320 Bylaws.** CAC membership, terms, organization, meeting requirements and the boundaries of CAC areas shall be established in the CAC bylaws adopted by the Board of Commissioners pursuant to BCC Chapter 3. The Board may establish a new CAC, abolish an inactive CAC, or combine CAC areas. [Ord 90-0069]

### **51.325 CAC Duties.**

- (1) The Planning Official shall refer proposed legislative and quasi-judicial land use actions which require a public hearing to each affected active CAC, as determined by the Planning Official, for review and recommendation.
- (2) The Planning Official may refer a proposed land use action which does not require a public hearing to an affected CAC for review and recommendation.
- (3) Failure of a CAC to meet or to forward its recommendation to the Planning Official prior to the hearing or decision shall not affect the validity of the decision. [Ord 90-0069]

## **THE PLANNING COMMISSION**

**51.400 Planning Commission Codified.** The Benton County Planning Commission, as established by County Resolution on July 11, 1951, and as developed and expanded by County Orders on December 12, 1963, February 1, 1978, September 2, 1981, and November 23, 1983, is hereby codified. [Ord 90-0069]

### **51.405 Powers and Duties.**

- (1) The Planning Commission shall review and make recommendations to the Benton County Board of Commissioners concerning proposed amendments to the Benton County Comprehensive Plan, Development Code, or Zoning Map. Prior to making a final recommendation on a proposed amendment, the Planning Commission shall hold at least one public hearing on the amendment.
- (2) The Planning Commission may propose amendments or additions to the Benton County Comprehensive Plan, Development Code, or Zoning Map. Prior to holding a public hearing on such proposed amendments, the Planning Commission shall receive preliminary authorization to consider amendments from the Board of Commissioners.

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- (3) The Planning Commission shall decide appeals of a decision of the Planning Official on applications made pursuant to this code, and shall decide applications as the initial decision maker as provided by this code. The Planning Commission shall hold a public hearing before deciding any land use action or appeal.
- (4) The Planning Commission shall serve as the Committee for Citizen Involvement (CCI). The CCI shall assist the Board of Commissioners with the development and evaluation of Benton County's Citizen Involvement Program as it relates to land use planning. The CCI shall conduct an annual review of the Citizen Involvement Program, and report its findings to the Board of Commissioners. [Ord 90-0069]

#### **51.410 Membership.**

- (1) The Planning Commission shall consist of nine members appointed by the Board of Commissioners for staggered four year terms. Terms shall commence on January 1st, except as otherwise provided by BCC Chapter 3.
- (2) In the event that a Planning Commissioner resigns or leaves office prior to the expiration of his or her term, the Board of Commissioners shall appoint a person to serve the unexpired portion of the original term.
- (3) Members of the Planning Commission may be removed from office by the Board of Commissioners pursuant to BCC Chapter 3.
- (4) No more than two voting members of the Planning Commission shall be engaged in the same kind of occupation, business, trade, or profession. No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employees of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. [Ord 90-0069]

**51.415 Bylaws.** Bylaws governing the Planning Commission shall be established by resolution of the Board of Commissioners. [Ord 90-0069]

### **APPLICATION AND FEES**

**51.505 Method of Application.** A person shall apply for a land use action or limited land use decision on a form provided by the Planning Official. Prior to reviewing an application, the Planning Official may request additional information which, in the opinion of the Planning Official, is necessary to complete the application. [Ord 90-0069, Ord 93-0096]

**51.507 Railroad Crossing.** At the time of application for a land use decision, limited land use decision, or expedited land division, the applicant shall inform Benton County if the only access to the subject property is or will be by means of a road, open to the public, crossing a railroad. In such case, the Planning Official shall notify the Oregon Department of Transportation and the railroad company. [Ord 2006-0214]

**51.510 Signature on Application.** The applicant shall sign the application. If the applicant is not the owner or the agent of the owner of the property subject to the land use action or limited land use decision, the property owner must authorize the application in writing before the Planning Official may review the application. For the purposes of this section, "agent of the owner" includes a public agency with condemnation authority which is proposing to construct a public improvement. [Ord 90-0069, Ord 93-0096]

#### **51.515 Application Fee.**

- (1) The Planning Official may charge a fee to process an application filed pursuant to the Development Code.
- (2) Fees shall be set by order of the Board of Commissioners. The Planning Official shall review application fees annually and shall recommend proposed fees and fee changes to the Board for adoption. [Ord 90-0069]

#### **51.520 Waiver of Fees.**

- (1) Any application fee may be waived or reduced by the Planning Official upon written request if:

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- (a) The proposed project will benefit the general public;
  - (b) The applicant is a non-profit, community-oriented service organization; and
  - (c) Payment of the application fee would pose a financial hardship to the applicant.
- (2) Only the "local" portion of a fee may be waived or reduced when a portion of a fee must be remitted to another agency as required by law. [Ord 90-0069]

**51.525 Revision of Application.**

- (1) All documents or evidence relied upon by the applicant shall be submitted to the Planning Official and be made available to the public at the time notice is provided pursuant to BCC 51.605 to 51.615. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance as follows:
- (a) If no public hearing will be conducted prior to the decision, any party which has reviewed the application materials shall be notified and given a reasonable opportunity to review the additional documents or evidence and submit testimony.
  - (b) A public hearing may be continued pursuant to BCC 51.720 or 51.725.
- (2) If the applicant proposes a revision to the application that changes the type of land use action or limited land use decision requested in the initial application, the applicant shall withdraw the initial application and shall file a new application for the revised request. [Ord 90-0069, Ord 92-0092, Ord 93-0096]

**51.530 Withdrawal of Application; Fee Refund.**

- (3) The applicant or owner may submit a written request to the Planning Official to withdraw an application prior to a decision to approve or deny the application. The Planning Official may refund all or part of the application fee based upon the amount of County staff work completed prior to the withdrawal.
- (4) The applicant may submit a request to the Planning Official to withdraw an application after a final decision to approve the application. Upon receipt of such request, the Planning Official shall cancel the permit. No refund shall be granted where a permit is cancelled following a final decision. [Ord 90-0069]

**51.535 Final Action.**

- (1) The County shall take final action on an application, including resolution of all appeals to County bodies, within 120 days for permit, limited land use, or zone change applications involving land located within an urban growth boundary or involving mineral aggregate extraction, or within 150 days for all other applications, unless otherwise specified in the Benton County Code. The 120-day or 150-day time period begins the day the application is deemed complete by the Planning Official. The time period may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days. The time period does not apply to an appeal of a decision of the Board of Commissioners, or to a text amendment.
- (2)(a) The Planning Official shall determine whether an application is complete and shall in writing notify the applicant of exactly what information is missing within 30 days of the date of the filing of an application. The applicant then has 180 days to complete the application.
- (b) The application shall be deemed complete for the purpose of BCC 51.535(1) upon the Planning Official's receipt of:
    - (A) All of the missing information;
    - (B) Some of the missing information and written notice from the applicant that no other information will be provided; or
    - (C) Written notice from the applicant that none of the missing information will be provided.
  - (c) On the 181st day after first being submitted, the application is void if the applicant has been

notified of the missing information and has not submitted the information specified in subsection (2)(b)(A), (2)(b)(B) or (2)(b)(C) of this section.

[Ord 26, Ord 90-0069, Ord 98-0134, Ord 2000-0157, Ord 2009-0232]

## **NOTICE REQUIREMENTS**

### **51.605 When Public Notice is Required.**

- (1) The Planning Official shall issue public notice pursuant to BCC 51.605 to 51.625 of applications for the following quasi-judicial land use actions:
  - (a) Appeal of a decision of the Planning Official or Planning Commission.
  - (b) Conditional use.
  - (c) Variance.
  - (d) Nonconforming use alteration.
  - (e) Vested right determination.
  - (f) Nonfarm parcel creation.
  - (g) Partition resulting in a parcel smaller than the minimum parcel size in the Forest Conservation, Exclusive Farm Use, or Multi-Purpose Agriculture Zone.
  - (h) Discretionary property line adjustment in a resource zone.
  - (i) Validation of a unit of land not legally established pursuant to BCC 94.160.
  - (j) Non-farm dwelling or lot of-record dwelling in the Exclusive Farm Use zone.
  - (k) Dwelling in a Forest Conservation zone, except a replacement dwelling or a dwelling on 160 acres or 200 noncontiguous acres.
  - (l) Historic resource – alteration or demolition (resource on the Benton County Register of Historic Resources).
  - (m) Historic resource – placement or removal from the Benton County Register of Historic Resources.
  - (n) Planned unit development.
  - (o) Subdivision.
  - (p) Zoning Map amendment.
  - (q) Comprehensive Plan Map amendment.
  - (r) Any other discretionary approval of a proposed development of land under the Benton County Comprehensive Plan or Development Code.
- (2) The Planning Official shall issue public notice pursuant to BCC 51.605 to 51.630 for the following legislative land use actions:
  - (a) Comprehensive Plan text amendment.
  - (b) Development Code text amendment.
- (3) The Planning Official shall issue public notice pursuant to BCC 51.621 for limited land use decision actions.
- (4) Notwithstanding subsection (1) of this section, the following quasi-judicial actions require notice of decision pursuant to BCC 51.625, but not notice of proposed action pursuant to BCC 51.610:

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- (a) Administrative review pursuant to BCC 53.160; and
- (b) Planning Official's Interpretation.

[Ord 90-0069, Ord 92-0092, Ord 93-0096, Ord 96-0118, Ord 2006-0214, Ord 2009-0232]

**51.608 Public Notice When Proposal Would Re-zone Property or Limit or Prohibit a Use.**

- (1) Pursuant to ORS 215.503, the Planning Official shall provide notice pursuant to this section for any land use action which proposes to:
  - (a) Change the zone designation of a property;
  - (b) Amend the Comprehensive Plan or adopt a new Comprehensive Plan such that a property will have to be rezoned in order to comply with the new or amended Comprehensive Plan; or
  - (c) Amend the Development Code or adopt a new land use regulation, the effect of which would be to limit or prohibit a use or uses which are currently allowed on a property.
- (2) In addition to the notice required under BCC 51.610 (3) or 51.618(2), the Planning Official shall mail written individual notice to all owners of property described in (1)(a), (b), or (c).
- (3) The notice shall describe in detail how the amendment will affect the use of the property, and shall be provided as follows:
  - (a) For a land use action pursuant to a requirement of periodic review of the comprehensive plan under ORS 197.628, 197.633, and 197.636:
    - (A) Notice shall be mailed to all owners of property described in (1)(a), (b), or (c) at least 30 days prior to the first Planning Commission hearing on the amendment;
    - (B) The notice shall contain substantially the following language and format:

**This is to notify you that Benton County has proposed a land use regulation that may affect the permissible uses of your property and other properties.**

As a result of an order of the Land Conservation Development Commission, Benton County has proposed \_\_\_\_\_[Ordinance Number or File Number]. Benton County has determined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

[Ordinance Number or File Number] will become effective on [date].

[Ordinance Number or File Number] is available for inspection at no cost at the Benton County Community Development Department located at [current address]. A copy of [Ordinance Number or File Number] also is available for purchase for the cost of copying.

- (b) For any other land use action requiring notice under this section:
  - (A) Notice shall be mailed to affected property owners at least 20 days but not more than 40 days prior to the first Planning Commission hearing on the amendment;

(B) The notice shall contain substantially the following language and format:

**This is to notify you that Benton County has proposed a land use regulation that may affect the permissible uses of your property and other properties.**

On [date of public hearing], Benton County will hold a public hearing regarding the adoption of [Ordinance Number or File Number]. Benton County has determined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

[Ordinance Number or File Number] is available for inspection at no cost at the Benton County Community Development Department located at [current address]. A copy of [Ordinance Number or File Number] also is available for purchase for the cost of copying.

- (4) As used in this section, “owner” means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll. [Ord 2006-0214]

#### **51.610 Public Notice Requirements for Quasi-Judicial Land Use Actions.**

- (1) When BCC 51.605(1) requires public notice, the Planning Official shall mail notice of a proposed quasi-judicial land use action at least 14 days prior to the date of decision or public hearing and shall publish notice of the application in a newspaper of general circulation in Benton County. In the case of a quasi-judicial land use action proposing to limit or prohibit a currently allowed use on a property, the notice requirements of BCC 51.608 shall apply. The notice required by BCC 51.610 shall be sent by regular mail to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:
- (a) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
  - (b) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
  - (c) Within 750 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone. If the 750 foot radius includes a portion of a neighborhood zoned for resource use that exceeds a density of one residence per two acres, the notice area shall be expanded to 1000 feet in that neighborhood only.
  - (d) The distances prescribed in subsections (a) through (c) of this section shall be considered minimums; the intent of this section is to notify property owners who could be affected by the proposed land use action.
- (2) Failure of a property owner to receive notice as provided by subsection (1) of this section shall not invalidate the proceedings if the Planning Official can demonstrate by affidavit that notice pursuant to subsection (1) was given.
- (3) The Planning Official shall publish notice of all land use actions which require a public hearing in at least one newspaper of general circulation in Benton County. Notice shall be published at least ten (10) days prior to the date of public hearing. The applicant shall pay the cost of the newspaper publication.
- (4) Notice shall be provided to:
- (a) Any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
  - (b) The Oregon Department of Transportation (ODOT) when the proposed land use action could

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affect an ODOT facility (including roads).

(c) Oregon Department of Fish and Wildlife when required by BCC 53.515.

(d) An airport owner when required by BCC 53.515.

(5) Nothing in BCC 51.605 to 51.625 shall preclude the County from providing additional notice where the County in its discretion deems additional notice to be appropriate.

[Ord 90-0069, Ord 93-0096, Ord 2000-0157, Ord 2009-0232, Ord 2015-0269]

**51.615 Form of Notice of Proposed Quasi-Judicial Land Use Action.**

(1) Public notice of a quasi-judicial land use action shall:

(a) Explain the nature of the application or land use action and the use or uses which could be authorized;

(b) List the applicable criteria from the Comprehensive Plan and Development Code that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the proposed date of decision, or the date, time, and location of the public hearing;

(e) State that failure of an issue to be raised in person or in writing by the close of the record at or following the final evidentiary hearing, or failure to provide sufficient specificity to afford the County decision maker the opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue;

(f) Include the name of a local government representative to contact and the telephone number of the County official where additional information can be obtained;

(g) State that a copy of the application, all documents and evidence relied upon by the applicant, together with all applicable criteria, are available for inspection at no cost, and a copy will be provided at cost;

(h) State that a copy of the preliminary staff report will be available for inspection at no cost at least seven days prior to the date of decision or public hearing, and a copy will be provided at cost; and

(i) State that any interested person may submit written testimony, and state the public comment period during which such testimony will be accepted. For a decision of the Planning Official, the public comment period shall be at least 14 days commencing on the date of notice and concluding at least 1 day before the date of decision. For a public hearing, the public comment period continues up to and through the public hearing until the hearing is closed pursuant to BCC 51.720. As used in this section, "written testimony" shall mean statements written or printed on paper, whether delivered in person, by mail, or by facsimile transmission. "Written testimony" shall also mean electronic mail (e-mail), provided the transmittal clearly states an intent for such testimony to be included in the record and the transmittal is received during the comment period by the staff contact listed on the notice of application.

(j) State the address to which written comments may be sent, and state the procedure for making the decision or for conduct of the hearing.

(k) For a hearing before the Planning Commission, state that notice of the decision will be mailed only to people who testify orally or in writing.

(2) The following statement shall appear on all notices sent to property owners pursuant to BCC 51.610(1):

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE IT MUST BE PROMPTLY

FORWARDED TO THE PURCHASER. The recipient of this notice is hereby responsible to forward a copy of this notice to every person with a documented interest, including a renter or lessee.

- (3) If the notice regards an appeal of a decision, the notice shall also include a description of the reasons for appeal and shall state the name of the appellant. [Ord 90-0069, Ord 2006-0214]

**51.618 Public Notice Requirements for Legislative Land Use Actions.**

- (1) All legislative land use actions shall be noticed pursuant to this section.
  - (a) A legislative land use action proposing to limit or prohibit a use currently allowed on a property shall also be subject to the notice requirements of BCC 51.608.
  - (b) Exception: The provisions of this section do not apply to a Comprehensive Plan or Development Code amendment that is solely for the purpose of conforming to new requirements in state statutes, Planning Goals, or administrative rules when the change will be adopted without a public hearing, pursuant to BCC 53.630.
- (2) Notice of all legislative land use actions shall be provided to the Oregon Department of Land Conservation and Development as prescribed in ORS 197.610.
- (3) The Planning Official shall publish notice of a proposed legislative land use action in at least one newspaper of general circulation in Benton County. Notice shall be published at least ten (10) days prior to the date of public hearing. Published notice shall contain the information specified in BCC 51.615(1).
- (4) The Planning Official shall make a reasonable attempt to mail notice of a proposed legislative land use action to all citizens, groups, organizations, and agencies, which testified in the most recent legislative action which addressed the subject matter under review in the proposed legislative land use action when such past legislative action occurred within the previous four years.
- (5) The Planning Official shall mail notice of a proposed legislative land use action to all groups, organizations, and agencies, whether comprised of citizens or professionals, which have declared an interest in the subject matter addressed by the proposed legislative land use action. Such declaration shall have been directed to the Planning Official in writing within one year of the pending public hearing on the proposed legislative land use action as a specific request to be notified of legislative proposals regarding a particular subject or subjects.
- (6) Notice shall be provided to:
  - (a) The Oregon Department of Transportation (ODOT) when the proposed land use action could affect an ODOT facility.
  - (b) Oregon Department of Fish and Wildlife, pursuant to BCC 53.615.
- (7) Nothing in this section shall preclude the County from providing additional notice where the County in its discretion deems additional notice to be appropriate. [Ord 92-0092, Ord 2006-0214, Ord 2015-0269]

**51.620 Form of Notice of Proposed Legislative Land Use Actions.**

- (1) Public notice of a proposed legislative land use action shall:
  - (a) Explain the nature of the proposed legislative enactments;
  - (b) State the date, time, and location of the public hearing;
  - (c) Include the telephone number of the Community Development Department where additional information can be obtained;
  - (d) State that a copy of the proposed ordinance is available for inspection at the Community Development Department at no cost and a copy will be provided at cost; and

- (e) State that any interested person may submit testimony prior to the final decision or prior to or at the public hearing and state the address to which written comments may be sent. [Ord 90- 0069, Ord 2006-0214]

**51.621 Form of Notice of Limited Land Use Decision Actions** (see definition of “limited land use decision”).

- (1) The Planning Official shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- (2) The notice for limited land use decisions shall:
  - (a) Provide a 14-day period for submission of written comments prior to the decision;
  - (b) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the County decision maker to respond to the issue;
  - (c) List, by commonly used citation, the applicable criteria for the decision;
  - (d) Set forth the street address or other easily understood geographical reference to the subject property;
  - (e) State the place, date and time that comments are due;
  - (f) State that copies of all evidence relied upon by the applicant are available for review and that copies can be obtained at cost;
  - (g) Include the name and phone number of a local government contact person;
  - (h) Provide notice of the decision to applicant and any person who submits comments under subsection (a) of this section. The notice of decision must include an explanation of appeal rights; and
  - (i) Briefly summarize the local decision making process for the limited land use decision being made. [Ord 93-0096, Ord 2006-0214]

**51.625 Notice of Decision Regarding a Quasi-Judicial Land Use Action.**

- (1) The Planning Official shall mail a notice of decision for which BCC 51.605(1) requires public notice to the applicant, the appellant in the case of an appeal, and the affected property owners as defined in BCC 51.610(1). In addition, the Planning Official shall mail notice of decision to all persons who testified either orally or in writing regarding the proposed action. The Planning Official shall mail a notice of decision within two days from the date of the final decision as defined in BCC 51.810. If the Planning Official fails to mail the notice of decision within two days, the appeal period of a decision to a County appellate body shall be extended one day for each day the mailing of the notice is delayed.
- (2) If the decision was made following a public hearing pursuant to BCC 51.705 to 51.725, the notice of decision need be mailed only to all persons who testified either orally or in writing regarding the proposed action. Furthermore, no published newspaper notice of decision is required.
- (3) The notice shall be entitled "Notice of Decision" and shall describe the location and nature of land use action and the nature of the decision, including any conditions of approval. The notice shall state the date of the decision and shall state that copies of the Findings of Fact are available for inspection at the Community Development Department, and that a copy will be provided at cost. The notice shall also state that the decision may be appealed, shall state the requirements for standing to appeal pursuant to BCC 51.825, shall state the appeal period, and shall state the name, address, and phone number of the appropriate appellate authority. [Ord 90-0069, Ord 2015-0269]



### **51.630 Notice of Decision Regarding a Legislative Land Use Action.**

- (1) The Planning Official shall mail a notice of decision to all persons who testified either orally or in writing regarding the proposed action. The Planning Official shall mail a notice of decision within two days from the date of the final decision as defined in BCC 51.810. If the Planning Official fails to mail the notice of decision within two days, the appeal period of a decision to a County appellate body shall be extended one day for each day the mailing of the notice is delayed.
- (2) The notice shall be entitled "Notice of Decision" and shall describe the nature of the land use action and the nature of the decision. The notice shall state the date of the decision and shall state that copies of the amendment and the Findings of Fact are available for inspection at no cost at the Community Development Department during specified hours, and that a copy will be provided at cost. The notice shall also state that the decision may be appealed, shall state the requirements for standing to appeal pursuant to BCC 51.825, shall state the appeal period, and shall state the name, address, and phone number of the appropriate appellate authority. [Ord 92-0092, Ord 2006-0214]

## **PUBLIC HEARINGS**

**51.705 Scheduling Public Hearings.** The Planning Official shall schedule a public hearing on an application or an appeal that requires a decision by a hearings authority at the next available meeting of that body. The Planning Official shall schedule applications for hearing in the order in which they are received. [Ord 90-0069]

### **51.710 Exhibits and Evidence for Hearings Regarding Quasi-Judicial Land Use Actions and Limited Land Use Decision Actions.**

- (1) All documents or evidence relied on by the applicant shall be submitted to the Community Development Department at least 14 days prior to the date of the hearing and be made available to the public at the time notice pursuant to BCC 51.610 and 51.615 is provided.
- (2) The staff report to be used at the hearing shall be available at least seven days prior to the date of the hearing.
- (3) Any person may submit exhibits or written comments prior to or at a public hearing. Such exhibits and written comments shall be attached to the staff report. If such exhibits or written comments are submitted after the staff report is made available pursuant to subsection (2) of this section, the Planning Official shall submit them at the public hearing for inclusion into the record. As used in this section, "written comments" shall mean comments written or printed on paper, whether delivered in person, by mail, or by facsimile transmission. "Written comments" shall also mean electronic mail (e-mail), provided the comments clearly state an intent for such comments to be included in the record and the transmittal is received during the comment period by the staff contact listed on the notice of application.
- (4) If the applicant modifies the application (e.g. details of the use requested, the size or number of parcels/lots proposed) after the deadline established in BCC 51.710(1), any party shall be entitled to a continuance of the hearing to consider and comment on the modified application. The applicant may modify arguments or evidence without triggering a continuance. The time period for a continuance under this section shall be at the discretion of the hearings authority, up to a maximum of 14 days. A continuance granted pursuant to this subsection shall not be subject to the 120/150- day local action deadline of BCC 51.535. [Ord 90-0069, Ord 93-0096, Ord 2000-0161, Ord 2006- 0214]

### **51.715 Exhibits and Evidence for Hearings on Legislative Land Use Actions.**

- (1) The proposed ordinance shall be drafted and made available to the public at the time notice pursuant to BCC 51.618 is provided.

- (2) Any person may submit exhibits or written comments prior to or at a public hearing. The Planning Official shall submit exhibits submitted prior to the hearing at the public hearing for inclusion into the record. [Ord 90-0069, Ord 2000-0161, Ord 2006-0214]

### **51.720 Conduct of a Public Hearing.**

- (1) A public hearing shall be conducted in accordance with the bylaws of the hearing authority.
- (2) If the hearing is quasi-judicial, or a limited land use decision action, the applicant for the initial land use decision shall testify first, followed by those persons in favor of the application. The Chair shall then call for testimony from those in opposition to the application. In an appeal hearing, testimony in opposition shall begin with the appellant, if different from the applicant. The Chair shall then call for testimony from governmental bodies. Prior to closing the hearing, the Chair shall allow the applicant an opportunity to rebut opposing testimony. Rebuttal shall be limited to issues raised during testimony in opposition or by governmental bodies. Following deliberation and decision, the hearings authority shall state that the decision is subject to appeal, shall state the appeal period, shall state the name of the appellate authority, and shall note that the address and phone number of the appellate authority will be contained in the mailed notice of decision.
- (3) If the hearing is legislative, the Chair will call for testimony generally and shall close the hearing after every person has been given an opportunity to comment.
- (4) At the commencement of a quasi-judicial or limited land use decision action hearing, a presentation shall be made to those in attendance that:
  - (a) Lists the applicable substantive criteria;
  - (b) States that testimony and evidence must be directed toward the applicable substantive criteria or other criteria in the plan or Development Code which the person believes to apply to the decision; and
  - (c) States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
- (5) Prior to closing an initial evidentiary hearing on a quasi-judicial or limited land use decision action, any participant may request an opportunity to present additional evidence, arguments or testimony. If such a request is made, the hearings authority shall either grant a continuance of the hearing pursuant to (a) below, or shall hold the record open for additional written testimony pursuant to (b) below.
  - (a) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days hence. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.
  - (b) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record and allow any person to raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.
  - (c) A continuance or extension granted pursuant to this section shall be subject to the local action deadline set forth in BCC 51.535, unless the continuance or extension is requested or agreed to by the applicant.
  - (d) Unless waived by the applicant, the hearings authority shall allow the applicant at least seven

days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the local action deadline set forth in BCC 51.535.

- (6) After a quasi-judicial or limited land use decision action hearing has been closed and the record has been closed, the hearings authority shall decide the issue based on the evidence and testimony in the record and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision and explains the justification for the decision based on the criteria, standards and facts set forth. The hearings authority shall adopt findings of fact in support of its decision. The hearings authority shall not make a decision which is different from the proposal described in the notice of proposed action provided pursuant to BCC 51.615(1) to such a degree that the notice of the proposed action does not reasonably describe the final decision, unless the hearings authority continues the public hearing for further testimony and issues new notice pursuant to BCC 51.605 to 51.625 which reasonably describes the proposed modification.

[Ord 90-0069, Ord 93-0096, Ord 2000-0161, Ord 2006-0214]

#### **51.725 Continuance of a Public Hearing.**

- (1) In addition to a continuance required by BCC 51.720(5), the hearing authority may continue a public hearing at its discretion to a date and time certain. If a quorum of the hearing authority does not appear for a scheduled public hearing, the public hearing shall automatically be continued to the date and time of the next regularly scheduled meeting. Where a hearing is continued by the hearing authority, no additional public notice shall be required unless the continuation results in a change in the application to such a degree that the notice of the proposed action does not reasonably describe the application.
- (2) When the hearings authority continues a hearing or reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.
- (3) A continued hearing shall be conducted in the same manner as the original hearing pursuant to the requirements of BCC 51.720. [Ord 90-0069]

## **APPEALS**

**51.805 Jurisdiction.** Except for ministerial decisions such as approving or denying a property line adjustment, a final decision on an application made pursuant to this code is subject to review by appeal.

- (1) Except as otherwise provided by this code, a decision of the Planning Official may be appealed to the Planning Commission and a decision of the Planning Commission may be appealed to the Board of Commissioners.
- (2) A decision of the Historic Resources Commission may be appealed to the Board of Commissioners. [Ord 26, Ord 90-0069, Ord 2006-0214]

**51.810 Final Decision Required.** No decision may be appealed except a final decision.

- (1) A decision of the Planning Official becomes final on the date the Notice of Decision is signed by the Planning Official.
- (2) A decision of the Planning Commission becomes final upon the date of the vote of the Planning Commission rendering a decision and adopting findings. A Planning Commission recommendation to the Board is not a final decision for purposes of appeal.
- (3) A decision of the Board of Commissioners becomes final as follows:
  - (a) A decision of the Board regarding a land use action or limited land use decision action that

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requires adoption of an ordinance becomes final upon the date notice is mailed to those entitled pursuant to BCC 51.630, after the second reading of the ordinance as provided by the Benton County Charter.

- (b) A decision of the Board regarding a land use action or limited land use decision action that does not require the adoption of an ordinance becomes final upon the date notice of the Board's adoption of the Findings of Fact, Conclusions of Law, and Order deciding the action is mailed to those entitled pursuant to BCC 51.625. [Ord 90-0069, Ord 93-0096, Ord 2000-0161, Ord 2006-0214]

**51.815 Appeal Period.** An appeal of a decision of the Planning Official or Planning Commission shall be filed within fourteen (14) calendar days from the date of final decision. An appeal of a decision of the Board of Commissioners shall be filed as provided by State law. [Ord 26, Ord 90-0069]

**51.820 Effective Date of a Decision.** A final decision becomes effective upon expiration of the appeal period. Except for land use ordinances, the filing of an appeal of a land use action automatically stays the decision until resolution of the appeal by County appellate authorities. Land use ordinances take effect as provided by the Benton County Charter. [Ord 26, Ord 90-0069]

**51.825 Standing to Appeal.**

- (1) Any person may appeal a decision of the Planning Official to the Planning Commission.
- (2) The Planning Commission may determine upon its own initiative to call up a decision of the Planning Official for review. The Planning Commission may call up a decision of the Planning Official in one of two ways:
  - (a) If a public meeting of the Planning Commission occurs within the appeal period, the Commission may determine by majority vote at the public meeting to review a decision of the Planning Official and shall set a public hearing on the decision for the next regular Planning Commission meeting for which public notice pursuant to BCC 51.605 to 51.625 can be provided. No appeal fee shall be charged.
  - (b) If a public meeting of the Planning Commission does not occur within the appeal period, an individual Planning Commissioner may cause a decision to be reviewed at a public hearing at the next regular meeting for which public notice can be provided by filing a signed notice of appeal with the Planning Official within the appeal period. No appeal fee shall be charged.
- (3) A person may appeal a decision of the Planning Commission to the Board of Commissioners if while the record was open the person provided written or oral testimony to the Planning Commission regarding the decision.
- (4) The Board of Commissioners may determine by majority vote to call up a decision of the Planning Commission for review if the vote occurs within the appeal period. [Ord 26, Ord 90-0069, Ord 2006-0214]

**51.830 Filing an Appeal.** The appeal requirements of this section are jurisdictional. Failure to fully comply with the appeal requirements of this section is a jurisdictional defect. An appeal shall be filed with the Planning Official no later than 5:00 p.m. on the final day of the appeal period. The appeal must be filed in writing on the form provided by the Planning Official, and shall include:

- (1) A statement of the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated;
- (2) A statement of the standing to appeal; and
- (3) Payment of the filing fee established by order of the Board of Commissioners. [Ord 26, Ord 90-0069, Ord 98-0134]

### **51.831 Fee Limitations.**

- (1) Where the county provides only a notice of the opportunity to request a hearing, the county may charge a fee for the initial hearing. This fee shall be limited to the lesser of the County's cost for preparing and conducting the hearing or \$250. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by:
  - (a) The Department of Land Conservation and Development; or
  - (b) Citizen Advisory Committees established by the Board of Commissioners and whose boundaries include the site. [Ord 93-0096, Ord 98-0134, Ord 2006-0214]

**51.835 Notice of Appeal Hearing.** The Planning Official shall issue public notice of an appeal hearing pursuant to BCC 51.610 and BCC 51.615. In addition, the following persons shall be sent notice by mail of the appeal hearing at least ten (10) days in advance of the hearing:

- (1) The appellant.
- (2) The applicant, if different from the appellant.
- (3) Those persons who testified either orally or in writing regarding the application prior to the decision that is under appeal. [Ord 90-0069]

### **51.840 Conduct of an Appeal Hearing.**

- (1) The appellate authority shall conduct a public hearing pursuant to BCC 51.705 to 51.725 prior to deciding an appeal. The appellate authority shall review the record of the decision that is under appeal, and shall additionally consider any new evidence or testimony that is submitted into the record at the hearing. Any person may appear and be heard. The appellate authority shall affirm, reverse, or modify in whole or in part the decision that is under appeal. The appellate authority shall not modify the decision on appeal to such a degree that the notice of the appeal does not reasonably describe the final decision, unless the appellate authority continues the public hearing for further testimony and issues new notice pursuant to BCC 51.605 to 51.625 which reasonably describes the proposed modification. The appellate authority shall adopt findings of fact supporting its decision.
- (2) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Board of Commissioners. Such issues shall be raised with sufficient specificity to afford the Board of Commissioners and the parties an adequate opportunity to respond to each issue. [Ord 90- 0069]

## **RECONSIDERATION OF DECISION BEFORE LUBA ON APPEAL**

**51.900 Reconsideration by Board of Commissioners of Decision Before LUBA on Appeal.** At any time after the filing of a notice of intent to appeal a land use decision or limited land use decision to the Land Use Board of Appeals, and prior to the date set for filing of the record, the Board of Commissioners may withdraw its decision for purposes of reconsideration. If the Board of Commissioners withdraws an order for purposes of reconsideration, it shall within such time as the Land Use Board of Appeals allows, affirm, modify, or reverse its decision. [Ord 93-0096]

## **REMAND HEARINGS**

**51.905 Hearing Procedure on Remand from LUBA.** When a final decision of the Board of Commissioners on a quasi-judicial land use action is remanded to the County by the Oregon State Land Use Board of Appeals (LUBA), the Board of Commissioners shall hold a hearing on remand. Notice shall be given pursuant to BCC

51.605 to 51.625, and the hearing shall be conducted pursuant to BCC 51.705 to 51.840 except that notice shall be provided at least 20 days prior to the hearing, and evidence and testimony shall be limited to the criterion or criteria or the issue or issues upon which LUBA based its decision to remand. These criteria or issues shall be described in the notice and at the hearing as provided by BCC 51.615(1)(b) and 51.720(4). [Ord 90-0069, Ord 2006-0214]



## Chapter 53

### General Review Criteria and Procedures

**53.050 Interpretation.** Any member of the public may apply for a Planning Official's Interpretation of provisions of the Comprehensive Plan or Development Code or their application to a specific property, project, or issue, pursuant to BCC 51.205. [Ord 2000-0161]

#### PERMITTED USES

**53.105 Purpose.** Permitted uses are land uses which are consistent with the purpose of the zone. [Ord 90-0069]

**53.110 Review Process.** In general, permitted uses are allowed to be established in a zone without review. Some permitted uses are regulated by a review process, but approval of such uses is based upon clear and objective standards. Unless specifically authorized by this code, the County may not impose additional criteria or conditions of approval upon a permitted use. [Ord 90-0069]

#### ADMINISTRATIVE REVIEW

**53.150 Purpose.** Administrative review is established as a procedure for land use actions involving little discretion.

**53.160 Review Process.** Upon receipt of a complete application, the Planning Official shall notify any affected agencies. The Notice of Proposed Quasi-Judicial Land Use Action of BCC 51.610 is not required. The Planning Official shall issue a decision based on the applicable standards and criteria, and shall provide notice of the decision pursuant to BCC 51.625. At the Planning Official's discretion, the matter may be referred to the Planning Commission. A decision of the Planning Official or Planning Commission may be appealed pursuant to BCC 51.805 through 51.840. [Ord 2000-0163]

#### CONDITIONAL USES

**53.205 Purpose.** Conditional uses are land uses which may have an adverse effect on surrounding permitted uses in a zone. [Ord 90-0069]

**53.210 Permit Required.** A person shall obtain a conditional use permit from the County in order to establish a conditional use. The decision to issue a conditional use permit is discretionary. [Ord 90-0069]

**53.215 Criteria.** The decision to approve a conditional use permit shall be based on findings that:

- (1) The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone;
- (2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and
- (3) The proposed use complies with any additional criteria which may be required for the specific use by this code. [Ord 90-0069]

**53.220 Conditions of Approval.** The County may impose conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the development activity, or to otherwise ensure compliance with the purpose and provisions of this code. On-site and off-site conditions may be imposed. An applicant may be required to post a bond or other guarantee pursuant to BCC 99.905 to 99.925

to ensure compliance with a condition of approval. Conditions may address, but are not limited to:

- (1) Size and location of site.
- (2) Road capacities in the area.
- (3) Number and location of road access points.
- (4) Location and amount of off-street parking.
- (5) Internal traffic circulation.
- (6) Fencing, screening and landscape separations.
- (7) Height and square footage of a building.
- (8) Signs.
- (9) Exterior lighting.
- (10) Noise, vibration, air pollution, and other environmental influences.
- (11) Water supply and sewage disposal.
- (12) Law enforcement and fire protection. [Ord 26, Ord 90-0069]

**53.225 Modification of a Conditional Use Permit.** An original applicant or successor in interest may request that a conditional use permit be modified if a change in circumstance has occurred since approval which would justify a change in the permit. Such application shall be processed as a new request for a conditional use permit. [Ord 26, Ord 90-0069]

**53.230 Period of Validity.** Unless otherwise specified at the time of approval, a conditional use permit for a single-family dwelling shall be valid for ten (10) years from the date of decision and other conditional use permits shall be valid for a period of two (2) years from the date of decision. [Ord 26, Ord 90-0069]

**53.235 Extension of Permit.** A conditional use permit may be extended for good cause at the discretion of the approving authority responsible for the original decision. The applicant shall submit the request for extension in writing to the Planning Official prior to expiration of the original permit. [Ord 26, Ord 90-0069]

## **NONCONFORMING USES**

**53.305 Nonconforming Use Allowed to Continue.** A legally established use of any building, structure or land existing at the time of the enactment or amendment of the Development Code or Zoning Map may continue in use. Continuation of a nonconforming use includes a change of ownership or occupancy. [Ord 26, Ord 90-0069]

### **53.310 Burden of Proof.**

- (1) The property owner shall bear the burden of proving the existence, continuity, nature and extent of a use for the purposes of BCC 53.305 through 53.335.
- (2) In no case shall the applicant be required to prove the continuous existence, nature and extent of a use for a period exceeding 20 years immediately preceding the date of application, enforcement order, or other pertinent action. However, the applicant shall demonstrate that the use was legal at the time it was established regardless of whether such establishment occurred more than 20 years ago.

[Ord 2006-0214]

### **53.315 Alteration of a Nonconforming Use.**

- (1) Alteration or change of a nonconforming use may be permitted if the alteration or change of the use, or of the structure or physical improvements associated with the nonconforming use, has no greater adverse



impact on the neighborhood than did the existing use at the time it became nonconforming. An application to alter a nonconforming use shall be reviewed by the Planning Official. The Planning Official may impose conditions of approval pursuant to BCC 53.220 in order to reduce the impact of the alteration on the neighborhood.

- (2) Alteration of a nonconforming use shall be permitted when necessary to comply with any lawful regulatory requirement. An application to alter a nonconforming use pursuant to a lawful requirement shall be reviewed by the Planning Official. The Planning Official may impose conditions of approval pursuant to BCC 53.220 in order to reduce the impact of the alteration on the neighborhood. [Ord 26, Ord 90-0069, Ord 2006-0214]
- (3) Alteration of a nonconforming public or private school in the Exclusive Farm Use zone or Multi-Purpose Agriculture zone shall be allowed as outlined in BCC 55.205(18) and (19). [Ord. 2020-0297]

**53.317 (Section Deleted)** [Ord 2009-0232, Ord 2015-0267, Ord 2020-0297]

**53.320 Abandonment of a Nonconforming Use.** A nonconforming use may not be resumed after a period of interruption or abandonment of one year unless the resumed use complies with the requirements of the Development Code in effect at the time of resumption of the use. [Ord 26, Ord 90-0069]

**53.325 Alteration of a Nonconforming Structure.** A legally established structure that does not comply with current siting standards may be altered provided the alteration does not increase the degree of nonconformity of the existing structure. A structure with a nonconforming setback may be increased in size provided the portion of the structure within the setback is not expanded in any dimension, including height. A structure with a nonconforming setback may be rebuilt within one year of destruction, provided the portion of the structure within the setback is rebuilt in the same location and is not expanded in any dimension, including height. [Ord 90-0069, Ord 2006-0214, Ord 2015-0267]

**53.330 Restoration or Replacement.**

- (1) When a nonconforming use has been unintentionally damaged or destroyed by calamity, such as fire, flood, wind or other casualty, the use may be restored or replaced. Restoration or replacement shall be commenced within two years from the occurrence of such calamity.
- (2) Notwithstanding subsection (1) of this section, in the Exclusive Farm Use zone a legally established non-farm use may be re-established to its previous nature and extent within two years of its destruction, if such destruction was unintentional and caused by fire, other casualty or natural disaster. Re-establishment shall meet all current building, plumbing, sanitation and other codes, ordinances and permit requirements.
- (3) **Extension.** The two-year time limit imposed by subsections (1) and (2) of this section may be extended as follows. The property owner may request an extension by submitting a written request to the Planning Official prior to the expiration of this two year period. The Planning Official may grant an extension for up to two additional years upon determining that the property owner has demonstrated that the nonconforming use is eligible for replacement pursuant to this chapter, and that the property owner was unable to initiate or continue development during the approval period for reasons for which the property owner was not responsible.

[Ord 26, Ord 90-0069, Ord 2006-0214]

**53.335 Vested Right to a Nonconforming Use.** A use lawfully initiated under a prior ordinance, but which has not been completed at the time the use becomes nonconforming, shall have a vested right to continue to completion if construction or other preparation has progressed to a substantial degree. The Planning Official shall determine whether an applicant has a vested right to complete a nonconforming use based on the following requirements:

- (1) The applicant must have relied in good faith on the prior zoning or permit approval in making expenditures to develop his or her property in a given manner.

- (2) The expenditures made prior to the subsequent zoning regulation must demonstrate that the property owner has gone beyond mere contemplated use and has committed the property to an actual use which would have been made but for passage of the new zoning regulation.
- (3) The expenditures must relate more to the nonconforming use than to conforming uses. If the expenditures could reasonably apply to preparation of the property for a conforming use, such expenditures may not be considered as vesting a right to a nonconforming use.
- (4) The amount of prior expenditure must represent more than an incidental expense when considering the cost of the project as a whole.
- (5) The length of time since the proposed use became nonconforming must be reasonable, considering the nature of the project, economic conditions, or other factors. [Ord 90-0069]

**53.340 Use Established Following a Claim under ORS 197.352 (Ballot Measure 37).**

- (1) A dwelling established following a claim under ORS 197.352 (Ballot Measure 37; 2004) on land zoned Exclusive Farm Use (EFU), Forest Conservation (FC), or Multi-Purpose Agriculture (MPA), shall be subject to BCC 55.106(5) for EFU or MPA zones, or 60.105(17) for FC zones.
- (2) Other than those uses specified in subsection (1) of this section, any use of land resulting from a claim under ORS 197.352 (Ballot Measure 37; 2004) shall be considered a nonconforming use, and shall be subject to the provisions of BCC 53.305 through 53.335.

[Ord 2006-0214]

**VARIANCES**

**53.405 Purpose.** A variance to any requirement of the Development Code may be granted where literal application of the requirement would cause significant hardship caused by unique characteristics of the property. [Ord 26, Ord 90-0069]

**53.410 Variance Criteria.** The decision to approve a variance shall be based on findings that:

- (1) Physical circumstances or other conditions of the land prevent the property from being reasonably developed in a manner consistent with the standards of the Development Code without significant hardship;
- (2) Such circumstances or conditions result in a hardship unique to the property in question;
- (3) The hardship does not result from actions of the applicant nor derive from personal circumstances of the applicant such as age, physical condition, or financial situation;
- (4) Strict adherence to the standard is unnecessary in that the proposed variance will not alter the essential character of the neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property; and
- (5) The proposed variance is the minimum variance of the standard that will afford relief and is the least modification possible of the provisions of the Development Code. [Ord 26, Ord 90-0069]

**53.415 Variance Conditions.** Conditions of approval pursuant to BCC 53.220 may be imposed on an approval of a variance to mitigate adverse impacts which may result from granting the variance. [Ord 90-0069]

**53.420 Period of Validity.** Unless otherwise specified at the time of approval, a variance shall be valid for one (1) year. [Ord 26, Ord 90-0069]

**53.425 Extension of Variance Approval.** A variance approval may be extended for good cause at the discretion of the approving authority responsible for the original decision. The applicant shall submit the request for extension in writing to the Planning Official prior to expiration of the initial variance. [Ord 90-0069]

## **ZONE CHANGE**

**53.505 Zone Change Criteria.** The Official Zoning Map may be amended if:

- (1) The proposed zoning for the property is more appropriate than the current zoning, when considering existing uses, changes in circumstances since the current zoning was applied, or information that indicates that the current zoning was not properly applied;
- (2) The impact on adjacent properties will be minimal;
- (3) Any significant increase in the level of public services which would be demanded as a result of the proposed zone change can be made available to the area; and
- (4) The proposed zone change is consistent with the policies of the Comprehensive Plan. [Ord 90-0069]

### **53.510 Initiating a Zone Change.**

- (1) A landowner may initiate a zone change for land in his or her ownership by submitting an application for a zone change to the Planning Official. The application shall include maps, drawings, data and other relevant information supporting the zone change.
- (2) The Board of Commissioners may initiate a zone change. The Board shall direct the Planning Official to prepare maps, drawings, data, and other information supporting the proposed zone change. [Ord 90-0069]

**53.515 Notice Requirements.** In addition to the notice requirements set forth in BCC 51.605 to 51.625, the Planning Official shall notify the following applicable agencies or agents of a proposed zone change.

- (1) If a zone change is proposed for land located in a resource zone, the Planning Official shall notify the Oregon Department of Fish and Wildlife for comments regarding impact on significant wildlife habitat.
- (2) The Planning Official shall notify an airport owner of any hearing concerning a zone change for property located within 5,000 feet of a visual flight rules (VFR) airport or 10,000 feet of an instrumental flight rules (IFR) airport. [Ord 90-0069]

**53.520 Planning Commission Review.** The Planning Commission shall conduct a public hearing to review a proposed zone change. Following the close of the public hearing, the Planning Commission shall make a recommendation to the Board of Commissioners to approve, deny or modify the proposed zone change. The Commission shall include findings in support of its recommendation. [Ord 90-0069]

**53.525 Board of Commissioners Review.** The Board of Commissioners shall conduct a public hearing to review a proposed zone change. The Board may approve, modify, or deny the proposed zone change. The Board shall include findings in support of its decision. If the Board approves the zone change, the Board shall amend the Official Zoning Map by ordinance pursuant to the provisions of the Benton County Charter. [Ord 90-0069]

### **53.530 Correction of map error.**

- (1) Notwithstanding the criteria and procedures of BCC 53.505 through 53.525, if a lot or parcel can be shown to have been unintentionally re-zoned through adoption of the 2004 Zoning Map (Ord 2004-0196), the property owner may request correction of the error through the following procedure.
  - (a) The property owner shall submit to the Planning Official evidence of the previous zoning and that the property was unintentionally re-zoned. Upon determination by the Planning Official that the property was unintentionally re-zoned, the Planning Official shall schedule the matter forthwith for a correction amendment by ordinance adopted by the Board of Commissioners.
  - (b) If the Planning Official determines that the property does not meet the standard for correction in (a) above, that determination shall be issued in the form of an interpretation pursuant to BCC 51.205(1). The interpretation may be appealed to the Planning Commission as provided in BCC 51.205.

- (c) Any unintentional re-zoning that also involves error on the Comprehensive Plan Map shall be corrected simultaneously through the process for correcting the Zoning Map described in subsections (a) and (b) of this section.
- (d) The Planning Official, the Planning Commission as a body, or any member of the Board of Commissioners may cause an unintentional re-zoning to be considered for correction by the Board of Commissioners. The owner of the affected property shall be notified of the proposed correction at least 10 days prior to the Board of Commissioners considering the correction ordinance. The property owner shall have the opportunity to provide written comment prior to the Board of Commissioners action.

[Ord 2004-0196]

## **TEXT AMENDMENT**

**53.605 Purpose.** On occasion, it may be appropriate to amend sections of the Comprehensive Plan or Development Code to respond to changing policies and conditions, or to clarify the text. [Ord 90-0069]

### **53.610 Initiating a Text Amendment.**

- (1) The Board of Commissioners may initiate an amendment to this code. The Board shall direct the Planning Official to prepare a background report discussing the justification for the proposed text amendment.
- (2) The Planning Commission may initiate a text amendment. The Planning Commission shall notify the Board of Commissioners of its intent to initiate an amendment. The Board must conceptually approve the amendment before the Planning Commission may cause an Ordinance to be drafted or a public hearing to be held. [Ord 90-0069]

**53.615 Notice Requirements.** In addition to the notice requirements set forth in BCC 51.605 to 51.625, the Planning Official shall notify the Oregon Department of Fish and Wildlife of any proposed text amendment affecting a resource zone, requesting comments regarding impact on significant wildlife habitat. [Ord 90-0069]

**53.620 Planning Commission Review.** The Planning Commission shall conduct a public hearing to review a proposed text amendment. Following the hearing, the Planning Commission shall make a recommendation to the Board to approve, deny or modify the proposed text amendment. [Ord 90-0069, Ord 2015-0267]

**53.625 Board of Commissioners Review.** The Board of Commissioners shall hold a public hearing to review a proposed text amendment. The Board may accept, reject, or modify the proposed text amendment in whole or in part. Incorporation of any text amendment into the Development Code shall proceed pursuant to the Ordinance adoption provisions of the Benton County Charter. [Ord 90-0069]

### **53.630 Amendment to conform Comprehensive Plan or Development Code to new requirement in statute, goal or rule.**

- (1) Notwithstanding contrary provisions of state and local law, including BCC 53.620 and 53.625, a change to the Comprehensive Plan or Development Code solely for the purpose of conforming the Plan or Code to new requirements in a land use statute, statewide land use planning goal or rule of the Land Conservation and Development Commission implementing the statutes or goals may be adopted without a land use public hearing if:
  - (a) The Planning Official gives notice to the Department of Land Conservation and Development (DLCD) of the proposed change in the manner provided by ORS 197.610 and 197.615; and
  - (b) The DLCD confirms in writing that the only effect of the proposed change is to conform the Comprehensive Plan or Development Code to the new requirements.
- (2) Nothing in this section removes any requirement in the Benton County Charter for a public hearing

prior to adoption of an ordinance.

- (3) Notwithstanding the requirement under ORS 197.830 (2) that a person must have appeared before the local government orally or in writing, a person who has not appeared may petition for review of the decision under subsection (1) of this section solely to determine whether the only effect of the local decision is to conform the Comprehensive Plan or the Development Code to the new requirements.

[Ord 2015-0267] {ORS 197.612}

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**Chapter 54**  
*Reserved for Expansion*



## **Chapter 55**

### **Exclusive Farm Use Zone (EFU)**

#### **55.005 Purpose of the Exclusive Farm Use Zone.**

- (1) The Exclusive Farm Use Zone (EFU) shall preserve and protect lands for continued and future commercial agricultural production and related uses, and conserve and protect open space, wildlife habitats, and other uses associated with agriculture. Except as otherwise provided by this code, the Exclusive Farm Use Zone shall preserve and maintain areas classified for farm use free from conflicting nonfarm uses and influences.
- (2) Uses of land not compatible with the purpose of the Exclusive Farm Use Zone shall be prohibited to minimize potential hazards of damage from erosion, pollution, conflicting land uses, and further depletion of agricultural land resources. [Ord 26, Ord 90-0069]

#### **APPLICATION OF THE ZONE**

#### **55.015 Standards for Application of the Exclusive Farm Use Zone.**

- (1) The Exclusive Farm Use Zone is applied to lands classified by the U.S. Soil Conservation Service as predominantly Class I-IV soils which are not otherwise subject to an exception of the statewide planning goals. The Exclusive Farm Use Zone is also applied to other lands necessary to preserve and maintain farm use consistent with existing and future needs for agricultural production. Soil capability classifications are indicated by the nature and type of soil, size and location of the property, the suitability of the terrain, and other similar factors. The Exclusive Farm Use Zone is also applied to intervening lands in different soil classes which are suitable for farm use or needed to permit farm practices to be undertaken on adjacent or nearby agricultural lands. [Ord 26, Ord 90- 0069, Ord 93-0098]
- (2) High-value farmland means land in a tract:
  - (a) Composed predominantly of soils that are classified prime, unique, Class I or Class II when irrigated or not irrigated; or
  - (b) Located east of the summit of the Coast Range, and composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described above and the following soils:
    - (A) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hultt, Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill:
    - (B) Subclassification IIIw, specifically, Concord, Conser, Cornelius Variant, Dayton (thick surface) and Sifton (occasionally flooded);
    - (C) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and
    - (D) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti and

Whiteson; or

- (c) Located west of the summit of the Coast Range, and growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture (USDA) taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa; or
  - (d) Located west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, and composed predominantly of the following soils or a combination of the soils identified in subsection (2)(a) and the following soils:
    - (A) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;
    - (B) Subclassification IIIw, specifically, Brenner and Chitwood;
    - (C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and
    - (D) Subclassification IVw, specifically, Coquille. [Ord 94-0108; Ord 2000-0157; Ord 2015-0268]
- (3) For purposes of approving a land use application on high-value farmland under the lot-of-record provisions of BCC 55.230:
- (a) Soil classes, ratings or other soil designations used in or made pursuant to this section are those of the Natural Resources Conservation Service (NRCS) Internet soil survey for that class, rating or designation before November 4, 1993, except for changes made pursuant to subsection (b) of this section. *{OAR 660-033-0030(7)(b)}*
  - (b) The county may change the soil class, soil rating or other soil designation of a specific lot or parcel if the property owner:
    - (A) Submits a statement of agreement from NRCS that the soil class, soil rating or other soil designation should be adjusted based on new information; or
    - (B) Submits:
      - (i) A report from a soils scientist whose credentials are acceptable to the Oregon Department of Agriculture (ODA) that the soil class, soil rating or other soil designation should be changed; and
      - (ii) A statement from ODA that the Director of Agriculture or the director's designee has reviewed the report described in subsection (3)(b)(B)(i) of this section and finds the analysis in the report to be soundly and scientifically based.
- {OAR 660-033-0030(7)(a)}* [Ord 2000-0157; Ord 2001-0174; Ord 2015-0268]
- (4) For the purposes of determining whether a tract is "High-value farmland" during review of a land use application pursuant to provisions of this chapter other than BCC 55.230, soil classes, ratings or other soil designations used in or made pursuant to this section are those of the NRCS Internet survey as of January 2, 2012 for that class, rating or designation. *{OAR 660-033-0030(8)}*
  - (5) More detailed data on soil capability than is contained in the USDA NRCS soil maps and soil surveys may be used to define agricultural land in land use proceedings identified in subsections (a) and (b) below. However, the more detailed soils data shall be related to the NRCS land capability classification system and shall be prepared pursuant to OAR 660-033-0030(5) and -0045. After October 1, 2011, only those soils assessments certified by DLCD may be considered by the county in

land use proceedings for:

- (a) A Comprehensive Plan Map and Zoning Map amendment from Agriculture and Exclusive Farm Use (respectively) to a non-resource plan designation and zone on the basis that such land is not “agricultural land”; and
- (b) Excepting land use decisions under subsection (3) of this section, any other proposed land use decision in which more detailed data is used to demonstrate that land planned and zoned for Exclusive Farm Use does not meet the definition of agricultural land under OAR 660-033-0020(1)(a)(A).

*{OAR 660-033-0030(5)}* [Ord 2000-0157; Ord 2001-0174; Ord 2006-0214; Ord 2015-0268]

**55.020 Definitions.** As used in this chapter:

- (1) “Accepted farming practice” means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.
- (2) “Farm operator” means 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.
- (3) "Farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203.
- (4) "Irrigated" means 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 division, 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.
- (5) “Winery” means a facility that produces wine pursuant to BCC 55.150. [Ord 2015-0268]

**55.030 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. [Ord 2006-0214]

**55.050 Notice of Pending Action.** Notice of all land use applications for new permanent dwellings and land divisions in the Exclusive Farm Use Zone shall be mailed to the Department of Land Conservation and Development at their Salem office at least ten (10) days prior to the date of the decision or permit issuance. The notice shall contain the information set forth in BCC 51.615. [Ord 94-0108, Ord 2006- 0214]

**55.075 Period of Validity of Discretionary Decisions.**

- (1) A discretionary decision, except for a dwelling listed in subsection (2) of this section or a land division, approving a proposed development on Exclusive Farm Use land outside an urban growth boundary is void two years from the date of final decision, if the development action is not initiated in that period.
  - (a) The Planning Official may grant one extension for a period of up to 12 months if the applicant makes a written request for an extension prior to the expiration of the approval period. The applicant must state the reasons that prevented the applicant from initiating or continuing development within the approval period. In order to approve the extension, the Planning Official must determine that the applicant was unable to initiate or continue development during the approval period for reasons for which the applicant was not responsible. Approval of an extension is not a land use decision and is not subject to appeal as a land use decision. Additional one year extensions may be authorized where applicable criteria for the decision have not

changed. [Ord 94-0108; Ord 2001-0174; Ord 2015-0268]

- (2) A discretionary decision approving a dwelling pursuant to BCC 55.220 (non-farm dwelling) or 55.230 (lot-of-record dwelling) shall be void four years from the date of final decision, if the development action is not initiated in that period. “Development action” typically means the property owner has submitted a complete application for a building permit for the dwelling or manufactured dwelling placement permit.
  - (a) The Planning Official may grant one extension for two additional years.
  - (b) Five additional one-year extensions may be granted. Extensions shall only be granted if:
    - (A) The applicant makes a written request for the additional extension prior the expiration of an extension;
    - (B) The applicable residential development statute has not been amended following the issued land use decision; and
    - (C) An applicable rule or land use regulation has not been amended following the issuance of the land use decision, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.
- (3) Approval of an extension is not a land use decision and is not subject to appeal as a land use decision. [Ord 94-0108, Ord 2006-0214; Ord 2015-0268; Ord 2020-0297]

## **PERMITTED USES**

**55.105 Permitted Uses.** The following uses are allowed in the Exclusive Farm Use Zone:

- (1) Farm use. (“Farm use” is defined in BCC 51.020.) [Ord 2015-0268]
- (2) The propagation or harvesting of a forest product.
- (3) Non-residential structures customarily provided in conjunction with farm or forest use.
- (4) Climbing and passing lanes within right-of-way existing as of July 1, 1987.
- (5) 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 parcels or lots result.
- (6) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as they are no longer needed.
- (7) Minor improvements to 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 which supports the operation and maintenance of public roads and highways.
- (8) Creation of, restoration of, or enhancement of wetlands. [Ord 2009-0232]
- (9) 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). [Ord 94-0108]
- (10) Fire service facilities providing rural fire protection services.
- (11) 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. [Ord 2015-0268]

- (12) Onsite filming and activities accessory to onsite filming for 45 days or less. A decision of the County issuing any permits necessary for activities under this provision is not a land use decision. For purposes of this section, “on-site filming and activities accessory to on-site filming”:
- (a) Includes:
    - (A) Filming and site preparation, construction of sets, staging, makeup and support services customarily provided for on-site filming.
    - (B) Production of advertisements, documentaries, feature film, television services and other film productions that rely on the rural qualities of an exclusive farm use zone in more than an incidental way.
  - (b) Does not include:
    - (A) Facilities for marketing, editing and other such activities that are allowed only as a home occupation; or
    - (B) Construction of new structures that requires a building permit.
- (13) 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 is not a land use decision as defined in ORS 197.015(10) or subject to review under this Chapter.
- (14) A firearms training facility as defined in ORS 197.770 in existence on September 9, 1995 shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.
- (15) Implementation of a wildlife habitat conservation and management plan approved by the Oregon Department of Fish and Wildlife pursuant to ORS 308A.403 through 308A.430.
- (16) Existing hunting preserve, as follows:
- (a) A person who owns a private hunting preserve that was licensed under ORS 497.248 on or before July 28, 2003, and that has not been submitted to the County for land use approval may continue to operate the hunting preserve without local land use approval. The hunting preserve may include one sport clay station that existed on July 28, 2003, is used during the hunting season only for shooting practice in conjunction with hunting and is subordinate to the use of the land as a hunting preserve.
  - (b) A person engaged in farm or forest practices on lands devoted to farm or forest use may file a complaint with the County, alleging that the operation of the hunting preserve has adversely affected the complainant and:
    - (A) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
    - (B) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
  - (c) The County shall process a complaint filed under this section in the manner described in BCC 55.218(2) through (5).

[Ord 2001-0174; Ord 2006-0214; Ord 2009-0232; Ord 2015-0268]

**55.106 Uses permitted in the Exclusive Farm Use Zone subject to review by the Planning Official.**

Uses in this section are permitted, provided the standards listed below are met.

- (1) **Ministerial Review.** The following uses are permitted subject to review for compliance with the standards listed. Such review is not a land use decision and no notice is required.



- (a) Utility facility service lines, limited to utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:
  - (A) A public right of way;
  - (B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or
  - (C) The property to be served by the utility. [Ord 2001-0174]
- (b) A facility for the processing of farm products, subject to the following.
  - (A) The facility shall be used for:
    - (i) Processing farm products or the production of biofuel as defined in ORS 315.141, provided at least one-quarter of the farm products come from the farm operation containing the facility; or,
    - (ii) The slaughter, processing or selling of poultry or poultry products from the farm operation containing the facility and consistent with the licensing exemption for a person under ORS 603.038.
  - (B) The processing area shall be 10,000 square feet or smaller.
  - (C) A facility with a processing area of less than 2,500 square feet is exempt from siting standards.
  - (D) "Processing area" means the floor area of a building dedicated to the farm product processing and does not include the floor area designated for preparation, storage or other farm use.
  - (E) The County shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located. [Ord 2001-0174, Ord 2009-0232, Ord 2020-0297]
- (c) 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 the wellhead. [Ord 2001-0174]
- (d) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a County Register as historic property as defined in ORS 358.480. In order to meet the requirements specified in the statute, a historic dwelling must be listed on the National Register of Historic Places and the Benton County Register of Historic Resources. The existing dwelling shall cease to be used as a dwelling within three months after completion of the replacement dwelling. The landowner shall sign a covenant as required by BCC 55.405(6).
- (e) Dog training classes or testing trials conducted outdoors or in farm buildings that existed on January 1, 2013, when:
  - (A) The number of dogs participating in training does not exceed 10 per training class and the number of training classes to be held on-site does not exceed six per day; and
  - (B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site does not exceed four per calendar year.

{OAR 660-033-0130(39)}

- (2) **Administrative Review.** The following uses are permitted subject to review by the Planning Official pursuant to BCC 53.160.

- (a) Farm Stand. A farm stand may be approved if:
  - (A) The farm stand is not used in conjunction with a marijuana crop;
  - (B) The structures are designed and used for the sale of farm crops or 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 incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and
  - (C) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.
  - (D) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.
  - (E) As used in this section, "local agricultural area" includes Oregon. [Ord 94-0108; Ord 2001-0174; Ord 2006-0214; Ord 2015-0270]
- (b) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings and facilities associated with a site for the takeoff and landing of model aircraft 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 this 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 controlled by radio, lines or design by a person on the ground. [Ord 2001-0174, Ord 2009-0232]
- (c) Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300 and wetland waste 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, and not including utility facility service lines as in BCC 55.106(1). *{ORS 215.283(1)(c)}*
  - (A) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:
    - (i) Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
      - (1) Technical and engineering feasibility;
      - (2) The proposed facility is locationally-dependent. A utility facility is locationally-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;



- (3) Lack of available urban and nonresource lands;
  - (4) Availability of existing rights-of-way;
  - (5) Public health and safety; and
  - (6) Other requirements of state and federal agencies.
- (B) Costs associated with any of the factors listed in subsection (i) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.
- (C) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
- (D) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.
- (E) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under the private campground provisions of BCC 55.210 or other provisions of this code when project construction is complete. Off-site facilities allowed under this subsection require conditional use approval pursuant to BCC 55.205. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.
- (F) In addition to the provisions of subsections (A) to (D) of this section, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.
- (G) The provisions of subsections (A) to (D) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.
- (H) An associated transmission line may be approved pursuant to OAR 660-033- 0130(16)(b).  
[Ord 2001-0174] { *OAR 660-033-130(16)* }
- (d) The land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in the EFU zone is allowed subject to the requirements of ORS 215.246, 215.247, 215.249 and 215.251 and one of the following:
- (A) 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
  - (B) In compliance with rules adopted under ORS 468B.095.
- (e) A church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of

worship, and a cemetery in conjunction with such place of worship, subject to subsections (A) through (F) of this section.

- (A) The real property on which a place of worship is lawfully established may reasonably be used for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education. *{ORS 215.441}*
  - (B) This use is not allowed on high-value farmland.
  - (C) 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 a place of worship within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4.
  - (D) Any enclosed structures or group of enclosed structures described in subsection (C) within a tract must be separated by at least one-half mile. For purposes of this section, “tract” means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.
  - (E) A place of worship shall be allowed only upon determination by the Planning Official that the level of public facilities, including transportation, water supply, sewer and storm drain systems, is adequate for the proposed use, including the activities customarily associated therewith (as described in subsection (A) above). If conditions of approval restricting or limiting the proposed use are necessary to ensure adequacy of public facilities, the Planning Official shall approve the use and impose the necessary conditions rather than deny the use.
  - (F) Existing, lawfully established facilities wholly within the EFU zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures located in the EFU zone and within three miles of an urban growth boundary may not be expanded beyond the requirements of subsections (C) and (D). *{OAR 660-033-0120, -0130(2)}*
- (f) Composting operations and facilities limited to the following:
- (A) Facilities that are in conjunction with, and auxiliary to, farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. A pre-application process is required under ORS 215.401.
  - (B) Existing lawfully established facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.

[Ord 2001-0174; Ord 2006-0214; Ord 2015-0268]

**55.107 Transportation Facilities, Services and Improvements.** Except for facilities, services and improvements specifically listed elsewhere in this chapter, transportation facilities, services and improvements shall be allowed, limited or prohibited as prescribed in OAR 660-012-0065. [Ord 2006- 0214]

## **FARM-RELATED DWELLINGS**

### **55.109 Farm Related Dwelling on High Value Farmland (\$80,000 Income Test).**

- (1) On land identified as high-value farmland pursuant to BCC 55.015(2), one dwelling considered

customarily provided in conjunction with farm use may be allowed subject to administrative review by the Planning Official, pursuant to BCC 53.160, for compliance with the following criteria: (Note: there is an alternative ownership history option available under BCC 55.114.)

- (a) The subject tract is currently employed for the farm use, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products, not including marijuana, 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) In addition to the subject parcel or lot, other parcels or lots in the same ownership may be used to demonstrate the gross farm income required by subsection (a) of this section. If multiple parcels or lots are used, they shall be subject to BCC 55.113. Parcels or lots noncontiguous to the subject tract may be used provided they are zoned for farm use and are located in Benton, Linn, Lane, Lincoln or Polk Counties;
- (c) Except as permitted for seasonal farm worker housing that has been approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on lands zoned Exclusive Farm Use or Multi-Purpose Agriculture owned by the farm or ranch operator or on the farm or ranch operation; and
- (d) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in BCC 55.109(1)(a);
- (e) In determining the gross income required by BCC 55.109(1)(a):
  - (A) Gross income only from land zoned EFU and/or MPA, and owned by the farm or ranch operation, not leased or rented, shall be counted;
  - (B) The cost of purchased livestock shall be deducted from the total gross income; and
  - (C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
- (f) The subject parcel or lot is lawfully established; and [Ord 94-0108]
- (g) The landowner shall sign a covenant as required by BCC 55.405(6).
- (h) The subject tract is not employed in the growing of a marijuana crop.

[Ord 2001-0174; Ord 2006-0214; Ord 2015-0268; Ord 2015-0270] {OAR 660-033-0135(3)}

### **55.110 Farm Related Dwelling on 160 Acres or More of Non-High-Value Farmland.**

- (1) One farm related dwelling may be permitted on land identified as non-high value pursuant to BCC 55.015(2), subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria:
  - (a) The parcel or lot on which the dwelling will be located is lawfully established, is at least 160 acres, and not designated as rangeland;
  - (b) The subject property is currently employed in 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; and
  - (d) Except as provided for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract. [Ord 94-0108]
  - (e) The landowner shall sign a covenant as required by BCC 55.405(6).

(f) The subject tract is not employed in the growing of a marijuana crop.

[Ord 94-0108; Ord 2001-0174; Ord 2006-0214; Ord 2015-0268; Ord 2015-0270] {OAR 660-033-0135(1)}

### **55.111 Commercial Dairy Farm Dwelling.**

- (1) One farm-related dwelling may be permitted on a lawfully established parcel or lot in conjunction with a commercial dairy farm, as defined by subsection (2) of this section, subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria:
  - (a) The subject tract will be employed as a commercial dairy as defined by subsection (2) of this section;
  - (b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy;
  - (c) Except as permitted for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract;
  - (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;
  - (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:
    - (A) A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and
    - (B) A Producer License for the sale of dairy products under ORS 621.072.
  - (g) The subject tract is not employed in the growing of a marijuana crop.
- (2) "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable, from the sale of fluid milk.

[Ord 2006-0214; Ord 2015-0268] {OAR 660-033-0135(7)}

### **55.112 Farm Related Dwelling on Non-High-Value Farmland (\$40,000 Income Test).**

- (1) One farm related dwelling may be permitted on land identified as non-high value farmland pursuant to BCC 55.015(2), subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria: (Note: there is an alternative ownership history option available under BCC 55.114.)
  - (a) The subject tract is currently employed for the farm use, on which, 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, the farm operator earned the lower of the following:
    - (A) At least \$40,000 in gross annual income from the sale of farm products, not including marijuana; or
    - (B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; and
  - (b) In addition to the subject parcel or lot, other parcels or lots in the same ownership may be used to demonstrate the gross farm income required by subsection (a) of this section. If multiple parcels or lots are used, they shall be subject to BCC 55.113. Parcels or lots noncontiguous to the subject tract may be used provided they are zoned for farm use and are located in Benton, Linn, Lane,

Lincoln or Polk Counties;

- (c) Except as permitted for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on lands zoned Exclusive Farm Use or Multi-Purpose Agriculture owned by the farm or ranch operator or on the farm or ranch operation;
- (d) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in BCC 55.112(1)(a);
- (e) In determining the gross income required by BCC 55.112(1)(a):
  - (A) Only gross income from land owned, not leased or rented, shall be counted;
  - (B) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;
  - (C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used. [Ord 94-0108]
- (f) The subject parcel or lot is lawfully established; and
- (g) The landowner shall sign a covenant as required by BCC 55.405(6).
- (h) The subject tract is not employed in the growing of a marijuana crop.

[Ord 2001-0174; Ord 2006-0214; Ord 2015-0268; Ord 2015-0270] {OAR 660-033-0135(4) and (5)}

### **55.113 Covenant for Multiple Parcels.**

- (1) Prior to the issuance of a building or placement permit for a dwelling authorized by BCC 55.109, 55.112, or 55.115 for which one or more contiguous or non-contiguous lots or parcels of a farm or ranch operation were used to demonstrate compliance with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" to this chapter has been recorded in the deed records of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:
  - (a) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and
  - (b) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.
- (2) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;
- (3) Enforcement of the covenants, conditions and restrictions may be undertaken by the Oregon Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located;
- (4) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section;
- (5) The Planning Official shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this



section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

[Ord 2006-0214; Ord 2006-0214; Ord 2015-0268] {OAR 660-033-0135(5)}

#### **55.114 Alternative Ownership History for Income-Test Dwellings.**

- (1) A dwelling may be considered customarily provided in conjunction with farm use if:
  - (a) Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable;
  - (b) The subject lot or parcel on which the dwelling will be located is:
    - (A) Currently employed for the farm use that produced 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 the gross farm income required by BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable; and
    - (B) At least the size of the applicable minimum lot size;
  - (c) Except as permitted for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract; and
  - (d) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this section;
  - (e) In determining the gross income required by subsections (1)(a) and (1)(b)(A) of this section:
    - (A) The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and
    - (B) Gross income only from land owned, not leased or rented, shall be counted. [Ord 2006-0214; Ord 2015-0268] {OAR 660-033-0135(9)}

### **ACCESSORY FARM DWELLINGS**

#### **55.115 Accessory Farm-Related Dwellings for Year-Round and Seasonal Farmworkers.**

- (1) Accessory farm-related dwellings may be permitted on a legally established parcel or lot, subject to administrative review by the Planning Official pursuant to BCC 53.160, if each accessory dwelling meets all the following requirements:
  - (a) The subject property and contiguous property in the same ownership are in farm use;
  - (b) The accessory dwelling will 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 primary farm operator; [Ord 2009-0232]
  - (c) The accessory dwelling will be located:
    - (A) On the same lot or parcel as the dwelling of the primary farm operator; or
    - (B) On the same tract as the primary farm dwelling if the lot or parcel on which the accessory farm dwelling will be sited is consolidated with the other lots and parcels in the tract into a single parcel or lot when the dwelling is allowed; or
    - (C) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to a manufactured dwelling with a deed restriction. The deed restriction shall be filed in the Benton County Deed Records and 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 reapproved under these rules; or

- (D) On any lot or parcel, 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 farm or ranch operations 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 this subparagraph shall be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. "Farmworker housing" means housing limited to occupancy by farmworkers and their immediate families; no dwelling unit may be occupied by a relative of the owner or operator of the farmworker housing. Housing for a relative of the farm operator may be approved pursuant to BCC 55.120. "Relative" means a spouse of the owner or operator or an ancestor, lineal descendant or whole or half sibling of the owner or operator or the spouse of the owner or operator. 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 under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable.
- (d) There is no other dwelling on the 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) The principal farm dwelling to which the proposed dwelling would be accessory meets one of the following:
  - (A) On land not identified as high-value farmland, the primary farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, on which, 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, the farm operator earned the lower of the following:
    - (i) At least \$40,000 in gross annual income from the sale of farm products, not including marijuana. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
    - (ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the income from the sale of marijuana and the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
  - (B) On land identified as high-value farmland, the primary farm dwelling is located on a tract 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, not including marijuana, 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. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
  - (C) It is located on a commercial dairy farm as defined by BCC 55.111(2); and
    - (i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and
    - (ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

- (f) The landowner shall sign a covenant as required by BCC 55.405(6), and, if applicable, BCC 55.113.
  - (g) The subject tract is not employed in the growing of a marijuana crop.
- (2) The governing body shall not approve a division of land that would separate the accessory farm dwelling approved pursuant to BCC 55.115 from the parcel or lot on which the dwelling of the farm operator is located, unless the dwelling meets the criteria for a principal farm related dwelling.
- (3) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to BCC 55.220.
- (4) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

[Ord 26, Ord 90-0069; Ord 94-0108; Ord 2001-0174; Ord 2006-0214; Ord 2009-0232; Ord 2015-0268; Ord 2015-0270] {OAR 660-033-0130(24)}

### **55.120 Farm-Help Dwelling for a Relative of the Farm Operator.**

- (1) One farm-related dwelling may be permitted on a lawfully established parcel or lot, subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria:
- (a) The dwelling will be located on property used for farm use;
  - (b) The dwelling will be located on the same lot or parcel as the dwelling of the farm operator, and 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 of the existing commercial farming operation (not including marijuana) is required by the farm operator;
  - (c) The farm operator shall continue to play the predominant role in the management and farm use of the farm. For purposes of this section, 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.
  - (d) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements of the zone, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect. For the purpose of this section, "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).
  - (e) The landowner shall sign a covenant as required by BCC 55.405(6).
  - (f) For the purpose of BCC 55.120(d), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).
  - (g) The subject tract is not employed in the growing of a marijuana crop.

[Ord 2001-0174; Ord 2006-0214; Ord 2015-0268; Ord 2015-0270] {OAR 660-033-0130(9)}

### **ALTERATION, RESTORATION OR REPLACEMENT OF A DWELLING**



**55.140 Alteration, restoration or replacement of a lawfully established dwelling may be permitted pursuant to the provisions of this section.**

- (1) The replacement dwelling permit shall be processed:
  - (a) As an Administrative Review pursuant to BCC 53.160, where the dwelling to be replaced formerly had the features described in subsection (2)(a) of this section; or
  - (b) Ministerially in all other cases.
- (2) Approval shall be based upon the Planning Official finding, based on substantial evidence, that:
  - (a) The dwelling to be altered, restored or replaced was lawfully established and has, or formerly had:
    - (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;
    - (D) A heating system; and
  - (b) If the dwelling complies with one of the following:
    - (A) Was removed, destroyed or demolished and:
      - (i) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and
      - (ii) Any removal, destruction or demolition occurred on or after January 1, 1973;
    - (B) Is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, and the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or
    - (C) Is not described in subsection (A) or (B) of this section and was assessed as a dwelling for purposes of ad valorem taxation:
      - (i) For the previous five property tax years; or
      - (ii) From the time when the dwelling was erected upon or affixed to the land and became subject to the assessment as described in ORS 307.010.
- (3) For replacement:
  - (a) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:
    - (A) Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or
    - (B) On or before a date set by the Building Official that is not less than 90 days after the replacement permit is issued, if the dwelling to be replaced is, in the discretion of the Building Official, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance; and
  - (b) If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.
  - (c) The applicant shall submit to the Planning Official for recording in the county deed records a document, prepared by the Planning Official, signed by the property owner and notarized, stating that the dwelling to be replaced has been removed, demolished or converted upon completion of one of these actions.

- (d) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the county deed records a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the Planning Official places a statement of release in the county deed records to the effect that the provisions of 2013 Oregon Laws, chapter 462, section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.
- (e) The Planning Official shall maintain the following records:
  - (A) When a dwelling approved for replacement has been removed, demolished or converted, this shall be noted in the records for the subject lot or parcel; and
  - (B) The lots and parcels that do not qualify for the siting of a new dwelling under subsection (2)(a) of this section, including a copy of the deed restrictions filed under subsection (3)(b) of this section.
- (4) A replacement dwelling must:
  - (a) Comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety and to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
  - (b) Be sited on the same lot or parcel:
    - (A) Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and
    - (B) If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.
- (5) A replacement dwelling permit:
  - (a) Is not subject to the time to act limits of ORS 215.417; and
  - (b) If expired before January 1, 2014, shall be deemed to be valid and effective if, before January 1, 2015, the holder of the permit:
    - (A) Removes, demolishes or converts to an allowable nonresidential use the dwelling to be replaced; and
    - (B) Submits to the Planning Official for recording in the county deed records a document prepared by the Planning Official, signed by the property owner and notarized, stating that the dwelling to be replaced has been removed, demolished or converted.
- (6) An accessory farm dwelling authorized pursuant to BCC 55.115(1)(c)(C), may be replaced only by a manufactured dwelling.
- (7) The landowner shall sign a covenant as required by BCC 55.405(6).
- (8) As used in BCC 55.140:
  - (a) "Alteration" means modification of an existing dwelling;
  - (b) "Restoration" means bringing back into existence a dwelling that previously existed on the property. The restored dwelling need not be the same size, configuration or location as the previous dwelling;
  - (c) "Replacement" means removal of an existing dwelling and establishment of a new dwelling.
- (9) As of January 1, 2024, unless section 2, chapter 462, Oregon Laws 2013 is extended or made

permanent, the provisions of BCC 55.140 shall be repealed and the provisions of BCC 55.106(5) as they existed prior to enactment of Ordinance 2015-0268 shall apply.

[Ord 94-0108; Ord 2001-0174; Ord 2006-0214; Ord 2015-0268; Ord 2020-0297]

## **WINERIES**

**55.150** A winery and associated activities may be authorized pursuant to this section; alternatively, a winery producing at least 150,000 gallons of wine, at the winery location or elsewhere, may be authorized pursuant to ORS 215.453.

- (1) A winery may be established, subject to administrative review by the Planning Official pursuant to BCC 53.160 to determine compliance with the following standards and criteria:
  - (a) The winery produces wine with a maximum annual production of:
    - (A) Less than 50,000 gallons and the winery:
      - (i) Owns an on-site vineyard of at least 15 acres;
      - (ii) Owns a vineyard of at least 15 acres contiguous to the winery;
      - (iii) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
      - (iv) Obtains grapes from any combination of subparagraph (i), (ii) or (iii) of this paragraph; or
    - (B) At least 50,000 gallons and no more than 100,000 gallons and the winery:
      - (i) Owns an on-site vineyard of at least 40 acres;
      - (ii) Owns a vineyard of at least 40 acres contiguous to the winery;
      - (iii) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery;
      - (iv) Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or
      - (v) Obtains grapes from any combination of subparagraph (i), (ii), (iii) or (iv) of this paragraph.
  - (b) In addition to producing and distributing wine, a winery established under this section may:
    - (A) Market and sell wine produced in conjunction with the winery.
    - (B) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
      - (i) Wine tastings in a tasting room or other location on the premises occupied by the winery;
      - (ii) Wine club activities;
      - (iii) Winemaker luncheons and dinners;
      - (iv) Winery and vineyard tours;
      - (v) Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;
      - (vi) Winery staff activities;

- (vii) Open house promotions of wine produced in conjunction with the winery; and
  - (viii) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.
- (C) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine, including food and beverages:
- (i) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
  - (ii) Served in conjunction with an activity authorized by subsection (B), (D) or (E) of this section.
- (D) Carry out agri-tourism or other commercial events on the tract occupied by the winery subject to subsection (2) of this section.
- (E) Host charitable activities for which the winery does not charge a facility rental fee.
- (c) A winery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (b)(C) of this section. Food and beverage services authorized under subsection (b)(C) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a café or other dining establishment open to the public.
- (d) The gross income of the winery from the sale of incidental items or services provided pursuant to subsection (b)(C) through (E) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. The Planning Official may, at any time, require the winery to submit a written statement that is prepared by a certified public accountant and certifies the compliance of the winery with this subsection for the previous tax year.
- (e) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
- (f) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards, described in subsection (a) of this section, have been planted or that the contract has been executed, as applicable.
- (g) The Planning Official shall apply the standards described in subsections (A) and (B) below. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:
- (A) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places unless the Planning Official grants a variance allowing a setback of less than 100 feet; and
  - (B) Provision of direct road access, internal circulation and parking.
- (h) The Planning Official shall also apply:
- (A) The provisions of BCC Chapter 83 (Floodplain Management Overlay), BCC 99.105 through 99.120 (Sensitive Land), BCC Chapter 84 (Willamette River Greenway), and Chapter 86 (Airport Overlay);
  - (B) Regulations of general applicability for the public health and safety; and

- (C) Other regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

**(2) Events at wineries.**

- (a) A winery may, pursuant to the requirements of this section, carry out up to 18 days of agri-tourism or other commercial events annually on the tract occupied by the winery. If a winery conducts agri-tourism or other commercial events authorized pursuant to this section, the winery may not conduct agri-tourism or other commercial events or activities authorized by ORS 215.283(4).
- (b) East of the summit of the Coast Range, events require authorization as described in subsections (A) and (B) of this section, subject to criteria and conditions pursuant to subsections (C) and (D) of this section.
  - (A) Events on the first six days of the 18-day limit per calendar year require a Benton County Winery Events License. The applicant shall submit the application form, supporting documentation to demonstrate compliance with subsection (C), and application fee, and shall obtain an approved license and comply with all conditions of approval prior to the first event and maintain compliance with all conditions of approval through all events. The Planning Official shall review the application to determine necessary conditions of approval pursuant to subsection (C) of this section. Issuance or denial of a Winery Events License is a ministerial decision, not subject to notification or appeal. The Winery Events License has a term of five years, and may be renewed through submittal of a renewal application and fee prior to expiration of the five-year term.
  - (B) Events on days seven through 18 of the 18-day limit per calendar year require a Benton County Winery Events Permit. The applicant shall submit the application form, supporting documentation to demonstrate compliance with subsections (C), and application fee, and shall obtain an approved permit and comply with all conditions of approval prior to the first event and maintain compliance with all conditions of approval through all events. The Planning Official shall review the application as an Administrative Review pursuant to BCC 53.160 to determine necessary conditions of approval pursuant to subsection (C) of this section. The Winery Events Permit has a term of five years, and may be renewed through submittal of a renewal application and fee prior to expiration of the five-year term.
  - (C) Approval of a License or Permit shall be based on a determination by the Planning Official that the proposed agri-tourism or other commercial events as proposed, or through compliance with conditions of approval, will:
    - (i) Be subordinate to the production and sale of wine; and
    - (ii) Not create significant adverse impacts to uses on surrounding land.
  - (D) The Planning Official shall, as necessary to ensure compliance with subsection (C), impose conditions of approval including but not limited to:
    - (i) The number of event attendees;
    - (ii) The hours of event operation;
    - (iii) Access and parking;
    - (iv) Traffic management;
    - (v) Noise management; and
    - (vi) Sanitation and solid waste.

- (3) When a bed and breakfast facility is authorized as a home occupation on the same tract as a winery

established under this section and in association with the winery:

- (a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (b) The meals may be served at the bed and breakfast facility or at the winery.
- (4) As used in this section:
- (a) “Agri-tourism or other commercial events” includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.
  - (b) “On-site retail sale” includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone.
- (5) Continuation of a use or structure lawfully established at a winery prior to June 28, 2013, may be subject to ORS 215.454.
- (6) For a winery authorized under provisions of law other than BCC 55.150 or ORS 215.453 after June 28, 2013, the gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery.

[Ord 90-0069; Ord 2001-0174; Ord 2006-0214; Ord 2015-0268] {ORS 215.452 through 215.456}

## CONDITIONAL USES

**55.205 Conditional Uses Reviewed by the Planning Official subject to BCC 53.215, BCC 53.220, and BCC 55.215.** The following uses may be allowed in the Exclusive Farm Use Zone by conditional use permit approved by the Planning Official:

- (1) Commercial activity in conjunction with farm use, subject to the following:
  - (a) A commercial activity shall not be permitted when carried on in conjunction with a marijuana crop; and
  - (b) A commercial activity may include, but is not limited to:
    - (A) The processing of farm crops into biofuel not permitted under BCC 55.106(1)(b); or
    - (B) A winery, if the winery:
      - (i) Does not qualify for siting under BCC 55.150(1) or ORS 215.453; or
      - (ii) Seeks to carry out uses or activities that are not authorized by BCC 55.150 or ORS 215.453.
      - (iii) For a winery authorized pursuant to this section after June 28, 2013, the gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. [Ord 2001- 0174; Ord 2006-0214; Ord 2009-0232; Ord 2015-0268; Ord 2015-0270]
- (2) Commercial utility facility for the purpose of generation of power for public use by sale, not including wind power generation facilities or photovoltaic solar power generation facilities. 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 the private campground provisions of BCC 55.210 or other provisions of this code when 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 BCC 55.205 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. [Ord 2001-0174; Ord 2015-0268]

- (3) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section 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. [Ord 2006-0214]
- (4) 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 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 the tract where the primary processing facility is located. [Ord 2001-0174]
- (5) Transmission towers over 200 feet in height.
- (6) Commercial dog boarding kennels or dog training classes or testing trials that cannot be established under BCC 55.106, except on High-Value Farmland. [Ord 2001-0174; Ord 2015-0268]
- (7) Residential home or facility, as defined in ORS 197.660, in an existing dwelling. The property owner shall sign a covenant as required by BCC 55.405(6). [Ord 2001-0174]
- (8) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the Oregon Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application. [Ord 2001-0174; 2006-0214]
- (9) Construction of additional passing and travel lanes requiring the acquisition of right-of-way, but not resulting in the creation of new parcels or lots.
- (10) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings, but not resulting in the creation of new parcels or lots.
- (11) 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 parcels or lots.
- (12) One manufactured dwelling, recreational vehicle, or temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or relative of the resident, subject to the standards of BCC 91.545 and 91.550 and the

following:

- (a) Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under BCC 55.140. Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
  - (b) The property owner shall sign a covenant as required by BCC 55.405(6). [Ord 2001-0174; Ord 2015-0268]
- (13) A home occupation, subject to the standards of BCC 91.205 - 91.230 and this section. A home occupation shall:
- (a) Be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located;
  - (b) Be operated by a resident or employee of a resident of the property on which the business is located;
  - (c) Employ on the site no more than five full-time or part-time persons; and
  - (d) Not unreasonably interfere with other uses permitted in the zone in which the property is located. [Ord 2001-0174; Ord 2006-0214; Ord 2015-0268]
- (14) Room and board arrangements for a maximum of five unrelated persons in existing residences. The property owner shall sign a covenant as required by BCC 55.405(6). [Ord 2001-0174]
- (15) Private family burial grounds, in compliance with the Standards for Private Family Burial Grounds in Chapter 91. [Ord 2015-0268]
- (16) On-site filming and activities accessory to on-site filming that exceed 45 days on any site within a one-year period or involve erection of sets that would remain in place for longer than 45 days. In addition to other activities described in the definition of "on-site filming" in BCC 55.105(13), these activities may include office administrative functions such as payroll and scheduling, and the use of campers, truck trailers or similar temporary facilities. Temporary facilities may be used as temporary housing for security personnel.
- (17) 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.
- (18) 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, and subject to subsections (a) through (c) of this section. This use shall not be approved on High-Value Farmland.
- (a) 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.
  - (b) Any enclosed structure or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.
  - (c) Existing facilities wholly within the EFU zone may be maintained, enhanced or expanded on the



same tract, subject to other requirements of law, but enclosed existing structures located in the EFU zone and within three miles of an urban growth boundary may not be expanded beyond the requirements of subsections (a) and (b). [Ord 2009-0232; Ord 2015-0268] {OAR 660-033-0130(2) and (18)}

- (19) Public or private schools legally established on or before January 1, 2009 may be continued, altered, restored, replaced, or expanded subject to the provisions of subsections (a) through (c) of this section.
- (a) The use was established on or before January 1, 2009;
  - (b) The expansion occurs on a tax lot;
    - (A) On which the school was established; or
    - (B) Contiguous to and, on January 1, 2015, under the same ownership as the tax lot on which the school was established; and
  - (c) The school is a public or private school for kindergarten through grade 12. [Ord 2020-0297]
- (20) Parking of no more than seven log trucks, subject to applicable health and safety regulations. [Ord 2015-0268] {ORS 215.311}
- (21) A living history museum, limited to 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.
- (a) A living history museum shall be:
    - (A) Related to resource-based activities; and
    - (B) Owned and operated by a governmental agency or a local historical society. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS Chapter 65.
  - (b) 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.
  - (c) 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.
  - (d) Any enclosed structures or group of enclosed structures described in subsection (c) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.
  - (e) Existing facilities wholly within the EFU zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures located in the EFU zone and within three miles of an urban growth boundary may not be expanded beyond the requirements of subsections (c) and (d). [Ord 2015-0268]

[Ord 26, Ord 90-0069, Ord 90-0075, Ord 94-0108, Ord 99-0146, Ord 2001-0174, Ord 2006-0214, Ord 2009-0232, Ord 2015-0268]

**55.210 Conditional Uses Approved by the Planning Commission, subject to BCC 53.215, BCC 53.220, and BCC 55.215.** The following uses may be allowed in the Exclusive Farm Use Zone by conditional use permit approved by the Planning Commission:

- (1) Golf courses as defined by OAR 660-033-0130(20) and subject to subsections (a) through (c) of this section. This use is not allowed on high-value farmland as defined in ORS 195.300; however, existing facilities may be continued, altered, restored, replaced, enhanced or expanded pursuant to conditional use review, subsections (a) through (c) below, OAR 660-033-0130(20), and shall not be expanded to contain more than 36 total holes.
  - (a) 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.
  - (b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, “tract” means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.
  - (c) Existing facilities wholly within the EFU zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures located in the EFU zone and within three miles of an urban growth boundary may not be expanded beyond the requirements of subsections (a) and (b). [Ord 2015-0268]
- (2) Destination Resort which is approved consistent with the requirements of statewide planning Goal 8. This use is not allowed on high-value farmland; however, existing facilities wholly within a farm use zone may be continued, altered, restored, replaced, enhanced or expanded pursuant to ORS 215.130. [Ord 2001-0174; Ord 2015-0268]
- (3) Aids to navigation and aviation.
- (4) Operations conducted for:
  - (a) 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 BCC 55.105;
  - (b) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to BCC 91.910;
  - (c) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement. However, no application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within two miles of a planted vineyard. This restriction does not apply to operations for batching and blending of mineral and aggregate under a local land use approval on the effective date of this code, or subsequent renewal of an existing approval. 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 ; and
  - (d) Processing of other mineral resources and other subsurface resources. [Ord 2001-0174]
- (5) Private parks, private playgrounds, private fishing preserves, and private campgrounds. This use is not allowed on high-value farmland; however, existing facilities may be continued, altered, restored, replaced, enhanced or expanded pursuant to ORS 215.130 and subsections (d) through (f) of this section.
  - (a) Except on a lot or parcel 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 under this section 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 6 month period.

- (b) 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 (c) of this rule.
  - (c) Subject to the approval of the Planning Commission, 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 the Board of County Commissioners, the Land Conservation and Development 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 the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in BCC 55.210(7), "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.
  - (d) 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.
  - (e) Any enclosed structures or group of enclosed structures described in subsection (d) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.
  - (f) Existing facilities wholly within the EFU zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures located in the EFU zone and within three miles of an urban growth boundary may not be expanded beyond the requirements of subsections (d) and (e). [Ord 2001-0174; 2006-0214; 2015-0268]  
*{OAR 660-033-0130(2), (18), (19)}*
- (6) Public parks and public playgrounds. A public park may be established consistent with the provisions of ORS 195.120, and OAR 660-034-0035 or 660-034-0040 (whichever is applicable), and the following:
- (a) 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.
  - (b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.
  - (c) Existing facilities wholly within the EFU zone may be maintained, enhanced or expanded on the

same tract, subject to other requirements of law, but enclosed existing structures located in the EFU zone and within three miles of an urban growth boundary may not be expanded beyond the requirements of subsections (a) and (b). [Ord 2001-0174; 2006-0214; 2015-0268]

- (7) Hunting preserves, except on high-value farmland. Note that a private hunting preserve that existed as of July 28, 2003, may continue to operate pursuant to BCC 55.105 and subject to the following:
  - (a) A person engaged in farm or forest practices on lands devoted to farm or forest use may file a complaint with the Board of Commissioners or the Planning Official, alleging that the operation of the hunting preserve has adversely affected the complainant and:
    - (A) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
    - (B) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
  - (b) The local governing body or its designee shall process a complaint filed under this section in the manner described in ORS 215.296 (4) to (7). [Ord 2006-0214, Ord 2009-0232; Ord 2015- 0268]
- (8) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. [Ord 2006-0214]
- (9) 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 Oregon Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation. This use is not allowed on high-value farmland; however, existing facilities wholly within a farm use zone may be continued, altered, restored, replaced, enhanced or expanded pursuant to ORS 215.130. [Ord 94-0108; 2015-0268]
- (10) A mass gathering, defined as a gathering, any part of which is held in open spaces, which involves more than 3000 people and which continues or can reasonably be expected to continue for more than 120 hours in any three-month period.
  - (a) A mass gathering shall be allowed by the Planning Commission if:
    - (A) The organizer makes application for a permit to the Planning Commission.
    - (B) The applicant demonstrates to the Planning Commission that the applicant has complied or can comply with the requirements for an outdoor mass gathering permit of ORS 433.750.
    - (C) The Planning Commission shall make findings that:
      - (i) Any permits required by the applicable land use regulations have been granted; and
      - (ii) The proposed gathering is compatible with existing land uses and does not materially alter the stability of the overall land use pattern of the area.
  - (b) In reviewing an application for a permit to hold an outdoor mass gathering, the county may require such plans, specifications and reports as it may deem necessary for proper review and it may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as it may deem necessary. If the county determines upon examination of the permit application that the outdoor mass gathering creates a potential for injury to persons or property, the county may require organizers to obtain an insurance policy in an amount commensurate with the risk, but not exceeding \$1 million. The policy of casualty insurance shall provide coverage against liability for death, injury or disability of any human or for damage to property arising out of the outdoor mass gathering. The county shall be named as an additional insured under the policy.
  - (c) In the event of failure to remove all debris or residue and repair any damage to personal or real

property arising out of the outdoor mass gathering within 72 hours after its termination and to remove any temporary structures used at the outdoor mass gathering within three weeks after its termination, the Board of Commissioners may file suit against the organizer for financial settlement as is needed to remove debris, residue or temporary structures and to repair such damage to real or personal property of persons not attending the outdoor mass gathering. The organizer shall be wholly responsible for payment of any fines imposed under ORS 433.990(7). [Ord 2001-0174; 2006-0214]

- (11) Composting operations and facilities that are not otherwise permitted pursuant to BCC 55.106(2) may be allowed on land not defined as high-value farmland, pursuant to the following.
  - (a) The composting operations and facilities shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle. A pre-application process is required pursuant to ORS 215.401.
  - (b) This use is not allowed on high-value farmland. However, existing, lawfully established facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. [Ord 2001-0174; 2006-0214; 2015-0268]
- (12) Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, pursuant to OAR 660-033-0130(37). This use is not allowed on high-value farmland. However, existing, lawfully established facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. [Ord 2015-0268]
- (13) Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, pursuant to OAR 660-033-0130(38). This use is not allowed on high-value farmland. However, existing, lawfully established facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. [Ord 2015-0268]

#### **55.215 Conditional Use Criteria.**

- (1) A use allowed under BCC 55.205 or 55.210 may be approved only upon findings that the use meets the Conditional Use Criteria of BCC 53.215 and will not:
  - (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
  - (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (2) An applicant for a use allowed under BCC 55.205 or 55.210 may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.
- (3) Farm and forest uses conducted within the following areas shall not be considered in determining whether a proposed conditional use complies with the standards set forth in subsection (1) of this section:
  - (a) Lots or parcels with a single-family residential dwelling approved under BCC 55.220 or 55.230;
  - (b) An exception area approved under ORS 197.732; or
  - (c) An acknowledged urban growth boundary.



**55.218 Complaint Regarding Conditional Approval.**

- (1) A person engaged in farm or forest practices on lands devoted to farm or forest use, but not a person residing in a single-family residential dwelling which was approved under BCC 55.220 or 55.230 or is within either an exception area approved under ORS 197.732 or an acknowledged urban growth boundary, may file a complaint with the local governing body alleging:
  - (a) That a condition imposed pursuant to BCC 55.215(2) of this section has been violated;
  - (b) That the violation has:
    - (A) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
    - (B) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
  - (c) That the complainant is adversely affected by the violation.
- (2) Upon receipt of a complaint, the Planning Official shall:
  - (a) Forward the complaint to the operator of the use;
  - (b) Review the complaint in the manner set forth in ORS 215.402 to 215.438; and
  - (c) Determine whether the allegations made pursuant to subsection (1) of this section are true.
- (3) Upon a determination that the allegations of the complaint are true, the Planning Official at a minimum shall notify the violator that a violation has occurred, direct the violator to correct the conditions that led to the violation within a specified time period and warn the violator against the commission of further violations.
- (4) If the conditions that led to a violation are not corrected within the time period specified pursuant to subsection (3) of this section, or if there is a determination pursuant to subsection (2) of this section following the receipt of a second complaint that a further violation has occurred, the County at a minimum shall assess a fine against the violator.
- (5) If the conditions that led to a violation are not corrected within 30 days after the imposition of a fine pursuant to subsection (4) of this section, or if there is a determination pursuant to subsection (2) of this section following the receipt of a third or subsequent complaint that a further violation has occurred, the Planning Official shall at a minimum order the suspension of the use until the violator corrects the conditions that led to the violation.
- (6) If a use allowed under BCC 55.205 or 55.210 is initiated without prior approval pursuant to BCC 55.215, the Planning Official at a minimum shall notify the user that prior approval is required, direct the user to apply for approval within 21 days and warn the user against the commission of further violations. If the user does not apply for approval within 21 days, the Planning Official shall order the suspension of the use until the user applies for and receives approval. If there is a determination pursuant to subsection (2) of this section following the receipt of a complaint that a further violation occurred after approval was granted, the violation shall be deemed a second violation and the County at a minimum shall assess a fine against the violator.

[Ord 2001-0174]

**NON-FARM DWELLINGS**

**55.220 Nonfarm Dwellings: Notice, Criteria and Conditions.**

- (1) A dwelling not provided in conjunction with farm use may be allowed in the Exclusive Farm Use Zone

by conditional use permit approved by the Planning Commission. The decision to approve a conditional use permit for a nonfarm dwelling shall be based on findings that the proposed dwelling complies with BCC 53.215, BCC 53.220, BCC 55.215, and the following criteria:

- (a) East of the summit of the Coast Range
  - (A) 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;
  - (B) The dwelling is situated on a tract that, as a whole, is generally unsuitable for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. If the parcel or lot is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel or lot;
  - (C) The dwelling will be sited on a lot or parcel created before January 1, 1993;
  - (D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated; to address this standard, the county shall:
    - (i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within 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.
    - (ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsection 55.220 and subsection 55.230 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;
    - (iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings 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; and

(E) The dwelling complies with conditions imposed pursuant to BCC 53.220.

(b) West of the summit of the Coast Range:

(A)

(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or a portion of a lot or 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; and

(ii) A lot or parcel or a portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or a portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or a portion of a lot or parcel is presumed to be suitable if it is composed predominantly of Class I-IV soils. Just because a lot or parcel or a portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(B) The dwelling will be sited on a lot or parcel created before January 1, 1993, or will be sited on a parcel created under BCC 55.328.

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in BCC 55.220(1)(a)(B). If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in BCC 55.220(1)(a)(B); and

(D) The dwelling complies with conditions imposed pursuant to BCC 53.220.

[Ord 2000-0157; Ord 2001-0174; Ord 2006-0214; Ord 2015-0268]

(2) Where a proposed nonfarm dwelling would be located in a significant big game habitat area as identified in the Natural Resources and Hazards Background Report, the Planning Official shall

provide the Oregon Department of Fish and Wildlife an opportunity to comment on consistency with significant habitat values. The County will make findings regarding consistency. The Department of Fish and Wildlife shall be provided a minimum of ten (10) working days' notice prior to the decision on the conditional use permit.

- (3) As a condition of final approval of a conditional use permit to establish a nonfarm dwelling, the owner of the subject parcel or lot shall disqualify the parcel or lot for valuation for farm use or forest use. The County shall not issue a building permit for the construction of a nonfarm dwelling without evidence the parcel or lot has been disqualified from farm use valuation, and any additional tax or penalty imposed by the County Assessor, as required by State law, has been paid. [Ord 26, Ord 90-0069, Ord 93-0098, Ord 94-0108, Ord 2000-0157]
- (4) If a single-family dwelling is established on a lot or parcel as set forth in BCC 55.220 or BCC 55.230, no additional permanent dwelling may later be sited on the same lot or parcel under the non-farm dwelling (BCC 55.220), lot-of-record (BCC 55.230), or dwelling in the Forest Conservation zone (BCC 60.108 through 60.109) provisions. [Ord 94-0108; 2001-0174]
- (5) The property owner shall sign a covenant as required by BCC 55.405(6). [Ord 2001-0174; Ord 2006-0214; Ord 2015-0268]

## **LOT OF RECORD DWELLINGS**

### **55.230 Lot of Record Dwellings.**

- (1) A Lot of Record Dwelling may be approved on a pre-existing lot or parcel if:
  - (a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner (as defined in BCC 55.230(1)(g)):
    - (A) Since prior to January 1, 1985; or
    - (B) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985;
  - (b) The tract on which the dwelling will be sited does not include a dwelling;
  - (c) If the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.
  - (d) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;
  - (e) The lot or parcel on which the dwelling will be sited is not high-value farmland as determined using the soils designations specified in BCC 55.015(3). A lot-of-record dwelling on high-value farmland may be approved as provided in BCC 55.230(8) and (9); and
  - (f) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based. Note: The Benton County Comprehensive Plan policies for big game habitat currently do not apply to land in the Exclusive Farm Use zone.
  - (g) For purposes of this subsection only, "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, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members.
- (2) 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 allowed.

- (3) The property owner shall sign a covenant as required by BCC 55.405(6).
- (4) If a single-family dwelling is established on a lot or parcel as set forth in BCC 55.220 or BCC 55.230, no additional permanent dwelling may later be sited on the same lot or parcel under the non-farm dwelling (BCC 55.220), lot-of-record (BCC 55.230), or dwelling in the Forest Conservation zone (BCC 60.108 through 60.109) provisions.
- (5) A dwelling allowed under BCC 55.230 may be denied approval in any area where it is determined that approval of the dwelling would:
  - (a) Exceed the facilities and service capabilities of the area;
  - (b) Materially alter the stability of the overall land use pattern of the area; or
  - (c) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.
- (6) The county assessor shall be notified that the governing body intends to allow the dwelling. [Ord 94-0108]
- (7) A property that has been granted an approval for a single-family dwelling under the provisions of BCC 55.230 may be sold or otherwise transferred to any other person. Unless the land use decision specifies a period of validity, the land use approval remains valid for the period allowed by law.

[Ord 2001-0174; Ord 2006-0214; Ord 2015-0268]

**LOT OF RECORD DWELLING ON HIGH-VALUE FARMLAND CLASS I AND II SOILS.**

- (8) Notwithstanding the requirements of BCC 55.230(1)(e), a single-family dwelling may be sited on high-value farmland as determined using the soils designations specified in BCC 55.015(3) if:
  - (a) It meets the other requirements of BCC 55.230(1) through (7);
  - (b) The lot or parcel is protected as high-value farmland as defined in BCC 55.015(2)(a); and
  - (c) The Planning Commission, determines that:
    - (A) 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. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or 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.
    - (B) The dwelling will comply with the provisions of BCC 55.215.
    - (C) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in BCC 55.220(1)(a)(B).
  - (d) The County shall provide notice of all applications for dwellings allowed under this subsection to the Oregon Department of Agriculture. Notice shall be provided in accordance with BCC 51.605

through 51.630, but shall be mailed at least 20 calendar days prior to the public hearing before the Planning Commission.

[Ord 2001-0174; Ord 2015-0268]

### **LOT OF RECORD DWELLING ON HIGH VALUE FARMLAND CLASS III AND IV SOILS.**

- (9) Notwithstanding the requirements of BCC 55.230(1)(e), a single-family dwelling may be sited on high-value farmland as determined using the soils designations specified in BCC 55.015(3) if:
- (a) It meets the other provisions of BCC 55.230(1) through (7) and (2);
  - (b) The tract on which the dwelling will be sited is:
    - (A) Identified in BCC 55.015(2)(b) or (d);
    - (B) Not high-value farmland defined in BCC 55.015(2)(a); and
    - (C) Twenty-one acres or less in size.
  - (c) The tract is:
    - (A) 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;
    - (B) Not a flag lot and 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 or
    - (C) A flag lot and 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 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The County must interpret the center of the subject tract as the geographic center of the flag lot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flag lot. 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) "Flag lot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.
      - (ii) "Geographic center of the flag lot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flag lot, at a 90-degree angle to that side, and the second line crosses the midpoint of the longest adjacent side of the flag lot.

[Ord 2001-0174; Ord 2006-0214; Ord 2015-0268]

### **CREATION OF NEW PARCELS ; PROPERTY LINE ADJUSTMENTS**

#### **55.305 General Provisions.**

- (1) A property line adjustment or land partition may be permitted in the Exclusive Farm Use Zone pursuant to this code. Subdivisions and planned unit developments are not consistent with the purpose and intent of the Exclusive Farm Use Zone and are prohibited.
- (2) No new parcel shall be created from a lot or parcel containing:
  - (a) A farm help dwelling for a relative (BCC 55.120);

- (b) A temporary medical hardship dwelling (BCC 55.205(12)),
  - (c) A non-farm dwelling (BCC 55.220) unless the land division is approved under the rules for creating a non-farm parcel (BCC 55.328); or
  - (d) A farm processing facility (BCC 55.106(1)(b)) if the land division would separate the processing facility from the farm operation.
- (3) The provisions of BCC 55.310 through 55.340 do not apply to:
- (a) The creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established; or
  - (b) Divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

[Ord 26, Ord 90-0069; Ord 94-0108; Ord 96-0118; Ord 2001-0174; Ord 2015-0268; Ord 2020-0297]

**55.310 Creation of Farm Parcels in the Exclusive Farm Use Zone.**

- (1) A parcel for farm use may be created, subject to approval by the Planning Official.
- (2) The size of any new or remaining parcels, unless approved for non-farm use, shall be at least the minimum parcel or lot size of 80 acres.

[Ord 26, Ord 90-0069, Ord 93-0098, Ord 94-0108, Ord 2001-0174]

**55.328 Creation of a Non-Farm Parcel for Residential Use.** A division of land for a dwelling or dwellings not provided in conjunction with farm use may be approved, subject to the following:

- (1) East of the summit of the Coast Range:
  - (a) The dwelling to be sited on the new parcel has been approved under the requirements for dwellings not in conjunction with farm use in BCC 55.220(1) - (5);
  - (b) Series partitions (as defined in ORS 92.305) and subdivisions for non-farm dwellings are not allowed;
  - (c) The originating farm parcel or lot:
    - (A) Is equal to or larger than the applicable minimum lot or parcel size;
    - (B) Does not meet the timber stocking requirements of ORS 527.610 to 527.770;
    - (C) Is composed of at least 95% Class VI through Class VIII soils; and
    - (D) Is composed of at least 95% soils not capable of producing 50 cubic feet per acre per year of wood fiber;
  - (d) The new lot or parcel will not be smaller than 20 acres; and
  - (e) A new parcel may be allowed only if the remaining farm parcel is equal to or larger than the applicable minimum lot or parcel size. [Ord 94-0108; 2001-0174; 2006-0214; Ord 2015- 0268]
- (2) West of the summit of the Coast Range, either (a) or (b) may be approved:
  - (a) Up to two new parcels smaller than the minimum size may be created, each to contain a dwelling not provided in conjunction with farm use if:
    - (A) The nonfarm dwellings have been approved under BCC 55.220;
    - (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
    - (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the



- minimum parcel size;
  - (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum parcel size; and
  - (E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.
- (b) A lot or parcel may be divided into two parcels, each to contain one dwelling not provided in conjunction with farm use if:
- (A) The nonfarm dwellings have been approved under BCC 55.220(1)(b);
  - (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
  - (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;
  - (D) The parcels for the nonfarm dwellings are:
  - (E) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber; and
  - (F) Composed of at least 90 percent Class VI through VIII soils;
  - (G) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and
  - (H) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

[Ord 94-0108; 2001-0174; 2006-0214]

**55.330 Creation of a Parcel for Nonfarm Non-residential Use.**

- (1) Subject to approval by the Planning Official, a nonfarm parcel for non-farm uses, except dwellings, listed in ORS 215.283(1)(s) and 215.283(2) may be created in the Exclusive Farm Use Zone, subject to approval by the Planning Official. The parcel shall be the minimum size necessary for the nonfarm use. If the nonfarm use is not existing, a permit for the nonfarm use shall be approved pursuant to BCC 55.215 prior to creation of the nonfarm parcel. [Ord 26, Ord 90-0069, Ord 94-0108]
- (2) In addition to the uses listed in (1) above, a non-farm parcel may be created for a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship, or for open space purposes, subject to the following:
  - (a) A parcel smaller than minimum parcel size may be created for the purpose of establishing a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship, including cemeteries in conjunction with the church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship, if:
    - (A) The church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship, has been approved under ORS 215.283 (1);



- (B) The newly created lot or parcel is not larger than five acres; and
  - (C) The remaining lot or parcel, not including the church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship, meets the minimum lot or parcel size described in BCC 55.310(2) either by itself or after it is consolidated with another lot or parcel.
- (b) A parcel may be created for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase, subject to the following:
- (A) A parcel created by the land division that contains a dwelling shall be large enough to support continued residential use of the parcel.
  - (B) A parcel created pursuant to this subsection that does not contain a dwelling:
    - (i) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;
    - (ii) May not be considered in approving or denying an application for siting any other dwelling;
    - (iii) May not be considered in approving a redesignation or rezoning of forestlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and
    - (iv) May not be smaller than 25 acres unless the purpose of the land division is:
      - (i) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or
      - (ii) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.
  - (C) The owner of any parcel involved in the land division and not containing a dwelling shall sign and record in the deed records for the County an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which no claim or action is allowed under ORS 30.936 or 30.937.

[Ord 2001-0174; Ord 2015-0268] {ORS 215.263(9)}

**55.335 Creation of a Parcel for an Existing Dwelling.** A parcel may be created for an existing dwelling to be used:

- (1) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under ORS 215.213 (3) or 215.284 (1), (2), (3) or (4); or
- (2) For historic property that meets the requirements of ORS 215.283 (1)(L). [Ord 2001-0174]

**55.340 Payment of Taxes Required.** No final approval of a division of land for nonfarm use under this section shall be given unless additional taxes imposed upon the change in use have been paid. [Ord 94- 0108; Ord 2001-0174]

## SITING STANDARDS

**55.405 Siting Standards and Requirements.** All structures allowed in the Exclusive Farm Use Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) A dwelling shall be placed at least thirty (30) feet from a property line and at least forty-five (45) feet from the edge of a roadway. Architectural features shall not project more than two (2) feet into a required setback.

- (2) Non-residential structures shall be placed at least twenty (20) feet from any property line, except that no setback is required for a structure of 120 square feet or less. A side or rear setback for a non-residential structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (3) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of a river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line. [Ord 94-0108]
- (4) A dwelling located within 200 feet of a forested area shall be provided with a spark arrestor on each chimney and a fire-retardant roof. [Ord 26, Ord 90-0069]
- (5) A minimum thirty (30) foot fire break shall be maintained. [Ord 94-0108]
- (6) Approval of any dwelling in the EFU zone shall include a condition of approval requiring the landowner for the dwelling to 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. [Ord 2001-0174]
- (7) A dwelling that was approved as a nonfarm dwelling pursuant to BCC 55.220 or predecessor code provision shall be sited at least 300 feet from property zoned for resource use, or shall conform to this standard to the greatest extent possible. This requirement shall not be applied to setbacks adjacent to a public road, including unconstructed right-of-way, except when required by an approved conditional use permit. [Ord 2001-0174; Ord 2015-0268]

**Exhibit A**

**Declaration of Covenants, Conditions and Restrictions Form**

Whereas, the undersigned \_\_\_\_\_ hereinafter referred to as Declarant, is owner in fee simple of the property described in Exhibit A attached hereto and incorporated by reference herein and

Whereas, the Declarant desires to declare their intention to create certain covenants, conditions and restrictions in order to effectuate and comply with the requirements of Oregon Administrative Rule (OAR 660, Division 033).

Declarant hereby declares that all of the property described on Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions and restrictions:

It is not lawful to use the property described in this instrument for the construction or siting of a dwelling except for accessory farm dwellings; relative farm assistance dwellings; temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215 or to use any gross farm income earned on this lot or parcel to qualify another lot or parcel for the construction or siting of a primary farm dwelling.

These covenants, conditions and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions are located executes and records a release of the covenants, conditions and restrictions created by this instrument.

In witness whereof, the undersigned, being Declarant herein, has heretofore set their hand this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

State of            )  
County            )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_.

Notary Public for Oregon

My Commission expires: \_\_\_\_\_

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## **Chapter 56**

### **Multi-Purpose Agriculture (MPA)**

**56.005 Purpose.** The Multi-Purpose Agriculture Zone shall preserve and protect lands for continued agricultural and forestry uses; conserve and protect open space, wildlife habitats, and other uses associated with agriculture; encourage continued development of the local agricultural base; and protect and preserve the social and economic base of the community. [Ord 26, Ord 90-0069]

#### **56.010 Standards for Application.**

- (1) The Multi-Purpose Agriculture Zone is applied to areas in the Alsea and Lobster Valleys where there is a mix of forested hillsides and agricultural river valleys that are divided into ownerships averaging approximately twenty (20) acres. This resource zone is intended to apply to areas where large scale agriculture cannot or does not exist, primarily due to the narrow width of the valleys, unfarmable steep hillsides and other social and economic factors. This area also contains lands which may not be suitable for resource use because of site specific characteristics. Agricultural and forestry operations in these areas are generally conducted by individuals who derive less than fifty percent (50%) of their income from farming or forestry. Therefore, Multi-Purpose Agriculture zoning recognizes that a non-resource use can be an acceptable secondary use when it can be shown not to interfere with resource uses or detract from the resource base. [Ord 26, Ord 90-0069]
- (2) The Multi-Purpose Agriculture Zone is an Exclusive Farm Use Zone. With the exception of the minimum parcel or lot size of 20 acres, Benton County Code Chapter 55, Exclusive Farm Use Zone applies to land zoned Multi-Purpose Agriculture. [Ord 94-0108]

#### **MINIMUM PARCEL OR LOT SIZE**

**56.305 Minimum Parcel or Lot Size.** The minimum parcel or lot size in the Multi-Purpose Agriculture Zone shall be twenty (20) acres. [Ord 26, Ord 90-0069, Ord 94-0108]

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## **Chapter 57**

### **Floodplain Agriculture Zone (FPA)**

**57.005 Purpose.** The Floodplain Agriculture Zone shall preserve and protect lands for continued agricultural production, harvesting and related uses; and conserve and protect open spaces, wildlife habitats, and other such uses associated with land subject to flooding. This zone shall provide for multiple uses of floodplain areas when such uses are compatible with recurring flooding and adjacent land utilization. [Ord 26, Ord 90-0069, Ord 2021-0304]

**57.010 Standards for Application.** The Floodplain Agriculture Zone is applied to select areas within the Corvallis Urban Growth Boundary subject to recurring flood inundation. [Ord 26, Ord 90-0069, Ord 2021-0304]

#### **PERMITTED USES**

**57.105 Permitted Uses.** The following uses are allowed in the Floodplain Agriculture Zone:

- (1) Farm use.
- (2) Forest use.
- (3) One dwelling per parcel or lot.
- (4) One manufactured dwelling 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.
- (5) Home occupation.
- (6) Day care for fewer than thirteen children.
- (7) Accessory use or structure.
- (8) Natural area, open space, or acquisition of greenway corridor.

[Ord 26, Ord 90-0069, Ord 2005-0209, Ord 2005-0210, Ord 2021-0304]

#### **CONDITIONAL USES**

**57.205 Conditional Uses Approved.** The following uses may be allowed in the Floodplain Agriculture Zone by conditional use permit approved by the Planning Official:

- (1) Public wildlife preserve.
- (2) Dam, power plant, transmission line, and transmission station, together with associated structures.
- (3) Water supply, water treatment facility, wastewater treatment facility, reservoir and other related facilities.
- (4) Operations conducted for the exploration, mining, and processing of geothermal resources, aggregate and other mineral resources or other subsurface resources.
- (5) Golf course.
- (6) Developed park or recreation facility, and bike paths.
- (7) Day care center.

[Ord 26, Ord 90-0069, Ord 2005-0209, Ord 2005-0210, Ord 2021-0304]

## MINIMUM PARCEL OR LOT SIZE

**57.305 Minimum Parcel or Lot Size.** All new parcels or lots created shall be reviewed under the provisions for Planned Unit Developments (PUD) contained in BCC Chapter 100. One parcel or lot may be created under the PUD provisions per five (5.00) acres. [Ord 90-0069, Ord 98-0141]

## SITING STANDARDS

**57.405 Siting Standards and Requirements.** All structures allowed in the Floodplain Agriculture Zone shall be sited in compliance with the applicable provisions of BCC Chapters 83, BCC Chapter 88 (when located within the Corvallis Urban Fringe), BCC Chapter 99, and the following additional standards in instances when they are more restrictive than the provisions of BCC Chapters 83, 88, and 99, as applicable:

- (1) A dwelling shall be placed at least thirty (30) feet from a property line, and at least forty-five (45) feet from the edge of a roadway. Architectural features shall not project more than two (2) feet into a required setback.
- (2) Non-residential structures shall be placed at least twenty (20) feet from any property line, except no setback is required for a non-residential structure of 120 square feet or less. A side or rear setback for a non-residential structure may be reduced to three (3) feet if that the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (3) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor streams, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.

[Ord 26, Ord 90-0069, Ord 2005-0209, Ord 2005-0210, Ord 2021-0304]

# **Chapter 58**

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# **Chapter 59**

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# Chapter 60

## Forest Conservation (FC)

### PURPOSE

#### **60.005 Forest Conservation Zone.**

- (1) The Forest Conservation Zone shall conserve forest lands, promote the management and growing of trees, support the harvesting of trees and primary processing of wood products, and protect the air, water, and wildlife resources in the zone. Resources important to Benton County and protected by this chapter include watersheds, wildlife and fisheries habitat, maintenance of clean air and water, support activities related to forest management, opportunities for outdoor recreational activities, and grazing land for livestock. Except for activities permitted or allowed as a conditional use, non-forest uses shall be prohibited in order to minimize conflicts with forest uses, reduce the potential for wildfire, and protect this area as the primary timber producing area of the County.
- (2) The provisions of this Chapter are not intended to regulate activities governed by the Forest Practices Act and Rules.
- (3) The provisions of this Chapter are based on the mandatory standards related to land use activities on forest land specified under Oregon state statutes, and Goal 4 of the Oregon Land Use Planning Program and the implementation requirements adopted by the Land Conservation and Development Commission pursuant to Chapter 660, Division 6 of the Oregon Administrative Rules. [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103]

**60.010** [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, repealed by 94-0103]

**60.015** [Ord 26F, Ord 90-0069, repealed by Ord 94-0103]

### APPLICATION OF THE ZONE

**60.020 Standards for Application for the Forest Conservation Zone.** The Forest Conservation Zone is applied to areas designated Forestry on the adopted Comprehensive Plan Map in compliance with Statewide Planning Goal 4 and OAR 660. This zone consists of areas containing forest soils which are not otherwise subject to an exception of the statewide planning goals. The Forest Conservation Zone is also applied to other lands necessary to preserve and maintain forest uses consistent with existing and future needs for forest management. Forest land capability is indicated by the nature and type of soil, slope, size and location of the property, the suitability of the terrain, and other similar factors. The Forest Conservation Zone is also applied to intervening lands which are suitable for forest management related uses or needed to protect forest land. [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 94-0103]

**60.030 Definitions.** As used in this chapter:

- (1) "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 pursuant to OAR 660-06-025(2)(d). 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 harvest. An auxiliary use is removed when a particular forest practice has concluded.
- (2) "Commercial Tree Species" means trees recognized for commercial production under rules adopted by the State Board of Forestry pursuant to ORS 527.715.
- (3) "Cubic Foot Per Acre" means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey.

- (4) "Cubic Foot Per Tract Per Year" means the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey.
- (5) "Forest Lands" as defined in Goal 4 are those lands acknowledged as forest lands or, in the case of a plan amendment, forest lands shall include:
  - (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and
  - (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.
- (6) "Forest Operation" means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620(6).
- (7) "Primary processing of forest products" means the initial treatments of logs or other forest plant or fungi materials to prepare them for shipment for further processing or to market, including, but not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion, or other similar methods of initial treatments.

**60.050 Notice of Pending Action.** Notice of all land use applications for new permanent dwellings and land divisions in the Forest Conservation Zone shall be mailed to the Department of Land Conservation and Development and the Department of Forestry at their Salem office at least ten (10) days prior to the date of decision or permit issuance. The information shall contain the information set forth in BCC 51.615. [Ord 90-0069, Ord 2006-0214]

**60.075 Period of Validity of Discretionary Decisions**

- (1) When a discretionary decision under ORS 215.416 approves a dwelling pursuant to BCC 60.105(14) or (17), 60.108, or 60.109, the approval shall be void four years from the date of final decision, if the development action is not initiated in that period. "Development action" typically means the property owner has submitted a complete application for a building permit for the dwelling or manufactured dwelling placement permit.
  - (a) One extension may be granted for two additional years.
  - (b) Five additional one-year extensions may be granted. Extensions shall only be granted if:
    - (A) The applicant makes a written request for the extension prior the expiration of the final approval or a previous extension, whichever is applicable;
    - (B) The applicable residential development statute has not been amended following the issued land use decision, except the amendments to ORS 215.750 Forest Dwelling Template Test by section 1, chapter 433, Oregon Laws 2019 (Enrolled House Bill 2225); and
    - (C) An applicable rule or land use regulation has not been amended following the issuance of the land use decision, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.
  - (c) Approval of an extension is not a land use decision and is not subject to appeal as a land use decision.
- (2) A discretionary decision, other than a dwelling identified in subsection (1) of this section or a land division, approving a proposed development on Forest Conservation land outside an urban growth boundary is void two years from the date of final decision if the development action is not initiated in that period.

[Ord 2006-0214; Ord 2020-0297]

**60.080 Soils Designations.**

- (1) For purposes of determining the "cubic feet per acre per year" in the review of an application for a

dwelling pursuant to BCC 60.108(2), the county shall use the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Soil Conservation Service/Natural Resources Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" or successor document and be approved by the Oregon Department of Forestry.

- (2) For purposes other than those described in subsection (1), the County shall use the soil designation most recently published by the Natural Resources Conservation Service, except that the County may use more detailed soils data provided it is related to the NRCS land capability classification and is prepared by a soils scientist certified for changing soil designations by the Oregon Department of Agriculture. [Ord 2001-0174, Ord 2009-0232]

## **PERMITTED USES**

**60.105 Permitted Uses Allowed in the Forest Conservation Zone.** The following uses are allowed in the Forest Conservation Zone:

- (1) Forest operations, forest practices, and any other forest management activities authorized under the Forest Practices Act and Rules. For purposes of this section and pursuant to OAR 660-06-005(2), forest operation means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620(6).
- (2) Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation, including temporary helipads. For purposes of this section and pursuant to OAR 660-06-025(2)(d), "auxiliary" is defined in BCC 60.030(1). [Ord 2017-0282]
- (3) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of mineral exploration, mining, commercial gravel extraction and processing, for construction and maintenance of forest roads in the immediate vicinity of the extraction and processing site, landfills, dams, reservoirs, road construction or recreational facilities. For purposes of this section and pursuant to OAR 660-06-025(2)(d), "auxiliary" is defined in BCC 60.030(1). [Ord 2001-0174, 2006-0214, Ord 2017-0282]
- (4) Uses to conserve soil, air, and water quality and to provide for wildlife and fisheries resources.
- (5) One dwelling per tract as provided for under BCC 60.108 and BCC 60.109.
- (6) Farm use as defined under BCC 51.020.
- (7) Local distribution of utilities (e.g. electric, telephone, natural gas) and accessory equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups.
- (8) Temporary portable facility for the primary processing of forest products. The facility shall not be placed on a permanent foundation and shall be removed at the conclusion of the forest operation requiring its use.
- (9) Exploration for mineral and aggregate resources as defined in ORS chapter 517.
- (10) Mining and processing of mineral and aggregate resources within the Surface Mining Overlay Zone (BCC Chapter 87).
- (11) Towers and fire stations for forest fire protection.

- (12) Widening of roads within existing rights-of-way in conformance with the transportation policies of the Comprehensive Plan including public roads and highway projects as described in ORS 215.283(1). [Ord 2001-0174, Ord 2009-0232]
- (13) Water intake facilities, canals and distribution lines for farm irrigation and ponds.
- (14) Caretaker residences for public parks and public fish hatcheries.
- (15) Uninhabitable structures accessory to fish and wildlife enhancement.
- (16) Temporary forest labor camps. These accommodations for employees are intended to provide housing for forest management activities or harvesting in the immediate vicinity of the facility, will not be constructed on permanent foundations, will exist no longer than 6 months, and must comply with all pertinent Benton County health and safety requirements.
- (17) Alteration, restoration or replacement of a lawfully established dwelling that:
  - (a) Has intact exterior walls and roof structures;
  - (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 converted to an allowable non-residential use within three months of the completion of the replacement dwelling. [Ord 2001-0174, Ord 2017-0282]
- (18) Structures accessory to a use listed in BCC 60.105(1) through (17). [Ord 2001-0174](19)
- (19) Private hunting and fishing operations without any accommodations. [Ord 2001-0174]
- (20) 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 is not a “land use decision” as defined in ORS 197.015(10) or subject to review under this Chapter.
- (21) An agricultural building, as defined in ORS 455.315, customarily provided in conjunction with farm use or forest use. A person may not convert an agricultural building authorized by this section to another use. [Ord 2017-0282]

[Ord 6, Ord 6B, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 95-0114, Ord 2001-0174, Ord 2006-0214, Ord 2009-0232]

## **DWELLINGS IN FOREST CONSERVATION ZONE**

**60.106 Purpose.** The review criteria and approval standards set forth in BCC 60.108 are drawn directly from mandatory provisions of state statutes. [Ord 94-0103]

**60.107 Date of Creation or Existence of a Lot, Parcel or Tract.** 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. [Ord 2017-0282]

**60.108 Dwellings in the Forest Conservation Zone.** One dwelling may be allowed on a tract in the Forest Conservation Zone under either (1) or (2) of this section, but only if the siting standards of BCC 60.405 and 60.410 are met, it complies with the requirements of the Comprehensive Plan and Development Code, and no dwellings exist or are allowed on other parts of the tract. Deed restrictions shall be required to ensure dwellings are not allowed on other lots or parcels that make up the tract.

- (1) **Dwelling on 160 Acres or 200 Acres.** A dwelling may be allowed if it complies with other provisions

of law and is sited on a tract of at least 160 contiguous acres or 200 acres in one ownership that are not contiguous but are in Benton County or adjacent counties and zoned for forest use. A deed restriction shall be filed pursuant to subsection (3) of this section for all tracts that are used to meet the acreage requirements of this paragraph.

- (2) **Template Test.** A dwelling may be allowed if the lot or parcel is predominantly composed of soils that are:
- (a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:
    - (A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
    - (B) All or part of at least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels; or
  - (b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:
    - (A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
    - (B) All or part of at least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels; or
  - (c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:
    - (A) All or part of at least eleven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
    - (B) All or part of at least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.
  - (d) Lots or parcels within Urban Growth Boundaries shall not be used to satisfy the eligibility requirements under this section.
  - (e) Except as described in BCC 60.108(2)(f), if the tract under BCC 60.108(2)(a) through (c) abuts a road that existed on January 1, 1993, the evaluation of parcels and dwellings in the vicinity may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.
  - (f) If a tract 60 acres or larger described under BCC 60.108(2) abuts a road or perennial stream, the evaluation of parcels and dwellings in the vicinity shall be made in accordance with BCC 60.108(2)(e). However, one of the three required dwellings shall be on the same side of the road or stream as the tract, and:
    - (A) Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is, to the maximum extent possible, aligned with the road or stream; or
    - (B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.
  - (g) If, under (f) above, a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling. [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 94-0103]
  - (h) Tract” means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

- (i) “Cubic Foot Per Tract Per Year” means the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Soil Conservation Service/Natural Resources Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry’s Technical Bulletin entitled “Land Use Planning Notes Number 3 dated April 1998” or successor document and be approved by the Oregon Department of Forestry

**(3) Covenants, Conditions and Restrictions.**

- (a) The applicant for a dwelling authorized by subsection (1) of this section that requires one or more lot or parcel to meet minimum acreage requirements shall provide evidence that the covenants, conditions and restrictions form adopted at the end of BCC Chapter 60 as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located;
- (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;
- (c) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located;
- (d) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section;
- (e) The Planning Official shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts which do not qualify for the siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

[Ord 2001-0174, Ord 2009-0232]

**60.109 Lot of Record Dwellings.**

- (1) A dwelling may be located on a tract that is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined in (5) below that provides or will provide access to the tract. The road shall be maintained and either paved or surfaced with rock and shall not be:
  - (a) A United States Bureau of Land Management road; or
  - (b) A United States Forest Service 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 United States Forest Service and landowners adjacent to the road, a local government or a state agency.
- (2) A dwelling authorized under this section shall comply with the following requirements:
  - (a) When the lot or parcel on which the dwelling will be sited lies within an area designated in the Benton County Comprehensive Plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density as provided in the Big Game Policies of the Natural Resources and Hazards element of the Plan.

- (b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
- (3) A dwelling allowed under this section may be allowed only if:
  - (a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner:
    - (A) Since prior to January 1, 1985; or
    - (B) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.
  - (b) The tract on which the dwelling will be sited does not include a dwelling and deed restrictions shall be required to ensure dwellings are not allowed on other lots or parcels that make up the tract;
  - (c) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;
  - (d) The siting standards of BCC 60.405 and 60.410 are met; and
  - (e) The dwelling complies with the requirements of the Comprehensive Plan and Development Code.
- (4) For the purposes of BCC 60.109(3) only, "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, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.
- (5) For the purposes of BCC 60.109, "public road" means a road over which the public has a right of use that is a matter of public record.

[Ord 95-0114; 2001-0174; 2006-0214]

**60.110** [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, repealed by Ord 94-0103]

## CONDITIONAL USES

**60.205 Conditional Uses Subject to Approval by the Planning Official.** The following uses may be allowed in the Forest Conservation Zone by conditional use permit approved by the Planning Official in conformance with the criteria set forth in BCC 60.220, 53.215, and 53.220.

- (1) Permanent facility for the primary processing of forest products that is:
  - (a) Located in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or a proportionate combination of indoor and outdoor yards; and
  - (b) Adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the governing body.
- (2) Permanent logging equipment repair and storage.
- (3) Log scaling and weigh stations.
- (4) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.
- (5) Fire stations for rural fire protection.
- (6) 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.

- (7) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.
- (8) Reservoirs and water impoundments.
- (9) Cemeteries.
- (10) Home occupations authorized under a permit issued in conformance with BCC 91.205 - 91.230 and which shall be subject to the following additional standards:
  - (a) It shall be operated by a resident or employee of a resident of the property on which the business is located;
  - (b) It shall employ on the site no more than five full-time or part-time persons;
  - (c) It shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located;
  - (d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located; and
  - (e) It shall be reviewed annually by the Planning Official for compliance with the Code.
- (11) One manufactured dwelling, recreational vehicle, or temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or relative of the resident, subject to the standards of BCC 91.545 and 91.550 and the following:
  - (a) Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed non-residential use. A temporary residence approved under this section is not eligible for replacement under BCC 60.105(17). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
  - (b) The property owner shall sign a covenant as required by BCC 60.220.
- (12) Parking of up to seven dump trucks and seven trailers as provided in ORS 215.311.

[Ord 6, Ord 22, Ord 22U, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 95-0114, Ord 2001-0174, Ord 2017-0282]

**60.210** [Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, repealed by Ord 94-0103]

**60.215 Conditional Uses Subject to Review by the Planning Commission.** The following uses may be allowed in the Forest Conservation Zone by a conditional use permit approved by the Planning Commission in conformance with the criteria set forth in BCC 60.220, 53.215, and 53.220.

- (1) Parks and campgrounds. Pursuant to OAR 660-006-0025(1)(b), recreational opportunities allowed in the Forest Conservation zone are limited to those that are determined to be appropriate in a forest environment.
  - (a) Private parks and campgrounds, subject to the following.
    - (A) Campgrounds in private parks shall only be those allowed by this subsection. 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. For the purposes of Chapter 60 of this Code, "campground" means an area devoted to overnight temporary use for vacation, recreation 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. A camping site 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 (B) below. A "campground" 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 6 month period.

- (B) Subject to the approval of the County, 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. As used in this rule, "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.
- (C) The Board of County Commissioners may request that the Land Conservation and Development Commission provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in the county. Such action by the Commission is based on a determination that the increase will comply with the standards described in ORS 215.296(1).

(b) Public parks pursuant to OAR 660-034-0035 or 660-034-0040, whichever is applicable.

- (2) Firearms training facilities as provided in ORS 197.770(2).
- (3) Private seasonal accommodations for fishing or fee hunting operations, subject to the following requirements:
  - (a) Accommodations are limited to no more than 15 guest rooms;
  - (b) Only minor incidental and accessory retail sales are permitted;
  - (c) Accommodations are occupied temporarily for the purpose of fishing or hunting during seasons authorized by the Oregon Fish and Wildlife Commission; and
  - (d) Accommodations for fishing must be located within 1/4 mile of fish bearing Class I waters as defined under the Forest Practice Rules.
- (4) New electric transmission lines with right of way widths of up to 100 feet as specified under ORS 772.210. New distribution lines (e.g. gas, oil, geothermal) with rights-of-way 50 feet or less in width;
- (5) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.
- (6) Expansion of an existing private airstrip or permanent helipad.
- (7) Public road and highway projects as described in ORS 215.283(2)(p) through (r) and 215.283(3).
- (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 well head.
- (9) Mining and processing of mineral or aggregate resources outside the Surface Mining Overlay Zone.
- (10) Destination resorts reviewed and approved pursuant to ORS 197.435 - 197.465 and Statewide Planning Goal 8.

- (11) Disposal site for solid waste approved by the Benton County Board of Commissioners and the Oregon Department of Environmental Quality together with equipment, facilities, or buildings necessary for its operation.
- (12) Television, microwave, and radio communication facilities and transmission towers.
- (13) Aids to navigation and aviation.
- (14) Extension of new water lines of a rural water supply system.
- (15) A mass gathering, defined as a gathering of more than 3,000 people any part of which is held in open spaces and which is expected to continue over 120 hours in any three-month period.
  - (a) A mass gathering shall be allowed by the Planning Commission if:
    - (A) The organizer makes application for a permit to the Planning Commission.
    - (B) The applicant demonstrates to the Planning Commission that the applicant has complied or can comply with the requirements for an outdoor mass gathering permit of ORS 433.750.
    - (C) The Planning Commission shall make findings that:
      - (i) Any permits required by the applicable land use regulations have been granted; and
      - (ii) The proposed gathering is compatible with existing land uses and does not materially alter the stability of the overall land use pattern of the area.
  - (b) In reviewing an application for a permit to hold an outdoor mass gathering, the county governing body may require such plans, specifications and reports as it may deem necessary for proper review and it may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as it may deem necessary. If the county governing body determines upon examination of the permit application that the outdoor mass gathering creates a potential for injury to persons or property, the county governing body may require organizers to obtain an insurance policy in an amount commensurate with the risk, but not exceeding \$1 million. The policy of casualty insurance shall provide coverage against liability for death, injury or disability of any human or for damage to property arising out of the outdoor mass gathering. The county shall be named as an additional insured under the policy.
  - (c) In the event of failure to remove all debris or residue and repair any damage to personal or real property arising out of the outdoor mass gathering within 72 hours after its termination and to remove any temporary structures used at the outdoor mass gathering within three weeks after its termination, the county governing body may file suit against the organizer for financial settlement as is needed to remove debris, residue or temporary structures and to repair such damage to real or personal property of persons not attending the outdoor mass gathering. The organizer shall be wholly responsible for payment of any fines imposed under ORS 433.990 (7).
- (16) Youth camps, pursuant to OAR 660-006-0031.

[Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 2001-0174, Ord 2006-0214]

**60.220 Conditional Use Criteria.**

- (1) A use allowed under BCC 60.205 or 60.215 may be approved only upon findings that the use:
  - (a) Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
  - (b) Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and
  - (c) Complies with criteria set forth in BCC 53.215 and 53.220.

- (2) As a condition of approval of a conditional use permit, the owner shall sign the following declaratory statement to be recorded into the County Deed Records for the subject property on which the conditional use is located that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules, and that recognizes the hazards associated with the area:

The property herein described is situated in the Forest Conservation Zone in Benton County, Oregon. The purpose of such zone is to conserve forest land, promote the management and growing of trees, support the harvesting of trees and primary processing of wood products, minimize conflicts with forest and farm uses, and protect the air, water, and wildlife resources in the zone. Residents may be subjected to customary forest or farm management practices which produce noise, dust, fumes, smoke, and other impacts. The resource nature of surrounding properties can result in herbicide and pesticide spraying, slash burning, timber cutting, farm operations, crown fires, hunting, use by big-game, bears, and cougar, and other accepted resource management practices. (Crown fires are fast-moving, high-intensity forest fires in which the fire spreads from one tree crown to the next rather than only along the ground.) Resource uses are the preferred uses in this zone. Activities by residents can create management difficulties or increased costs for nearby farm or forest operations. Grantee acknowledges the need to avoid activities that negatively impact nearby farm or forest uses.

In consideration for the approval by Benton County of the following use: \_\_\_\_\_, the grantee, including heirs, assigns and lessees, recognizes that such impacts are likely to occur, and agrees therefore that no action shall be brought at law or before any governmental body or agency involving the non-negligent utilization or continuation of accepted resource-management practices such as, but not limited to, the examples noted above. As used in this section, "accepted resource management practices" means a mode of operation that is authorized under the Forest Practices Act or necessary to a farm or forest operation to obtain a profit in money.

[Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 94-0103, Ord 2006-0214, Ord 2009-0232]

## **CREATION OF NEW PARCELS OR LOTS; PROPERTY LINE ADJUSTMENTS**

**60.305 Minimum Parcel or Lot Size in the Forest Conservation Zone.** The minimum parcel or lot size in the Forest Conservation Zone shall be eighty (80) acres. [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 96-0118]

**60.310** [Ord 26B, Ord 26F, Ord 90-0069, repealed by Ord 94-0103]

**60.315 Creation of a Parcel or Lot Smaller than the Minimum Parcel or Lot Size for a Non-Residential Purpose.**

- (1) A parcel or lot less than 80 acres in size in the Forest Conservation Zone for the non-residential uses listed in subsection (4) may be approved by the Planning Official if the proposed parcel or lot will:
- (a) Not force a significant change in, or significantly increase the cost of accepted farming or forest practices on agriculture or forest lands;
  - (b) Not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;
  - (c) Not alter the stability of the surrounding land use patterns; and
  - (d) Be the minimum necessary to accommodate the non-residential use.
- (2) Where a parcel or lot smaller than 80 acres is proposed, the County shall provide the Oregon Department of Fish and Wildlife an opportunity to comment on the consistency with significant habitat values. The County shall make findings regarding consistency. The Department of Fish and Wildlife shall be provided with a minimum of ten (10) working days' notice prior to the decision on the land partition.

- (3) As a condition of approval, the applicant for creation of a parcel or lot smaller than 80 acres shall sign a declaratory statement to be recorded into the County Deed Records that conforms to BCC 60.220(2) and has the following two additional statements:
  - (a) All rights to build a dwelling on the parcel or lot less than 80 acres are removed; and
  - (b) Any future partitioning of the subject parcel or lot as it existed on March 7, 1994, will maintain a net density of at least 80 acres per parcel or lot.
- (4) Pursuant to OAR 660-06-025(3)(m and n) and OAR-06-025(4)(a-o), such divisions are only allowed for the following uses:
  - (a) 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 adjustment to the well head.
  - (b) Destination resorts reviewed and approved pursuant to ORS 197.435 to ORS 197.465 and Goal 8 of the State Land Use Program.
  - (c) Disposal site for solid waste ordered established by the Oregon Environmental Quality Commission together with equipment, facilities or buildings necessary for its operation.
  - (d) Permanent facility for the primary processing of forest products.
  - (e) Permanent logging equipment repair and storage.
  - (f) Log scaling and weigh stations.
  - (g) Disposal site for solid waste approved by the Board of Commissioners and 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.
  - (h) Parks and campgrounds.
  - (i) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520 and not otherwise permitted under subsection (3)(m) of this rule (e.g. compressors, separators and storage serving multiple wells), and mining and processing of mineral or aggregate resources as defined in ORS Chapter 517.
  - (j) Television, microwave and radio communication facilities and transmission towers.
  - (k) Fire stations for rural fire protection.
  - (l) 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.
  - (m) Aids to navigation and aviation.
  - (n) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.
  - (o) Reservoirs and water impoundments.
  - (p) Firearms training facilities.
  - (q) Cemeteries.

[Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 2001-0174]

### **60.320 Creation of a Parcel Smaller than the Minimum Parcel Size for an Existing Dwelling.**

- (1) A parcel smaller than the minimum parcel size which contains a dwelling that has existed since before June 1, 1995 may be created subject to the following requirements:

- (a) The parcel established 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; and
  - (b) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:
    - (A) Meets the minimum land division standards for the Forest Conservation Zone; or
    - (B) Is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone.
  - (c) As a condition of approval, the landowners shall sign a deed covenant to be recorded into the County Deed Records on the remaining parcel, not containing the dwelling, which prohibits the siting of a dwelling on the parcel. This restriction shall be irrevocable unless a statement of release is signed by the Planning Official indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural or forest land.
- (2) A division of a lot or parcel containing two or more dwellings may be approved subject to the following requirements:
- (a) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
  - (b) Each dwelling complies with the criteria for a replacement dwelling under BCC 60.105(17);
  - (c) Except for one lot or parcel, each lot or parcel created under this paragraph is between two and five acres in size;
  - (d) At least one dwelling is located on each lot or parcel created under this paragraph; and
  - (e) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the Planning Official indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to Statewide Planning Goal 4 or unless the land division is subsequently authorized by law or by a change in Statewide Planning Goal 4.
  - (f) A lot or parcel may not be divided under this subsection if an existing dwelling on the lot or parcel was approved under:
    - (A) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or
    - (B) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under statewide goal 4 (Forest Lands).
- (3) The Planning Official shall maintain a record of lots and parcels that do not qualify for the siting of a new dwelling under restrictions imposed under subsection(1)(d) of this section, or that do not qualify for division under restrictions imposed under subsections (2)(e) or (2)(f) of this section. The record shall be readily available to the public.
- (4) As a condition of approval of a land division allowed under BCC 60.320, the landowner shall sign the declaratory statement contained in BCC 60.220(2) to be recorded into the County Deed Records for the parcel containing the dwelling. This statement recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules. [Ord 98-0134; 2006-0214]

**60.325 Creation of a Parcel Smaller than the Minimum Parcel Size to Facilitate a Forest Practice.**

- (1) A parcel smaller than 80 acres may be approved to facilitate a forest practice as defined in ORS 527.620. Approvals shall be based on findings which demonstrate that there are unique property-specific characteristics present in the proposed parcel that require an amount of land smaller than the minimum area requirements BCC 60.305 in order to conduct the forest practice. Parcels created pursuant to this subsection:
  - (a) Shall not be eligible for siting of new dwelling;
  - (b) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;
  - (c) May 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, unless the purpose of the land division is to:
    - (A) Facilitate an exchange of lands involving a governmental agency; or
    - (B) Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forest land.
- (2) As a condition of approval of a land division allowed under BCC 60.325, the landowner shall sign the declaratory statement contained in BCC 60.220(2) to be recorded into the County Deed Records for the parcel containing the dwelling. This statement recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules.

[Ord 2001-0174]

**60.330 Creation of Parcels Smaller than the Minimum Parcel Size for a Public Park, Public Open Space, or Non-Profit Land Conservation Organization.** A land division resulting in two parcels, one or both of which are smaller than the minimum parcel size, may be authorized subject to the following requirements:

- (1) One of the parcels shall be purchased or otherwise acquired by a governmental or not-for-profit provider of public parks or public open space, or a not-for-profit land conservation organization;
- (2) The parcel created by the land division that is not acquired by the governmental or not-for-profit provider of public parks or public open space, or a not-for-profit land conservation organization, shall comply with the following:
  - (a) If the parcel contains a dwelling or another use allowed under ORS chapter 215, the parcel must be large enough to support continuation of the 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 “Parks” or as may be authorized under BCC 55.230, 60.108(1), 60.108(2), or 60.109, based on the size and configuration of the parcel;
- (3) Prior to approval of the proposed division of land, the provider of public parks or open space or the land conservation organization shall sign for recording in the County deed records an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:
  - (a) Establishing a dwelling on the parcel;
  - (b) Developing the parcel for any use not authorized in a forest zone except park or conservation uses; and
  - (c) 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; and
- (4) If a proposed division of land under this section 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. [Ord 2009-0232]

## **SITING STANDARDS**

**60.405 Siting Standards and Requirements.** All new structures allowed in the Forest Conservation Zone shall be sited in compliance with BCC Chapter 99 and the following standards designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks, and to conserve values found on forest lands:

- (1) The owner of any new structure shall maintain a primary and secondary fuel-free fire-break surrounding the structure on land that is owned or controlled by the owner, in accordance with the provisions in “Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads” dated March 1, 1991 and published by the Oregon Department of Forestry.
- (2) Non-residential structures shall be located at least twenty (20) feet from a parcel or lot line, except no setback is required for a structure of 120 square feet or less. A required side or rear setback for a non-residential structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (3) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (4) All new development approved by Benton County shall have a site specific development plan addressing emergency water supplies for fire protection which is approved by the local fire protection agency. The plan shall address:
  - (a) Emergency access to the local water supply in the event of a wildfire or other fire-related emergency;
  - (b) Provision of an all-weather road or driveway to within 10 feet of the edge of identified water supplies which contain 4,000 gallons or more and exist within 100 feet of the driveway or road at a reasonable grade (e.g. 12 percent or less); and
  - (c) Emergency water supplies shall be clearly marked along the access route with a Fire District approved sign.
- (5) All buildings shall have roofs constructed of materials defined under the Uniform Building Code as either Class A or Class B (such as but not limited to composite mineral shingles or sheets, exposed concrete slab, ferrous or copper sheets, slate shingles, clay tiles or cement tiles).
- (6) All new structures shall be sited on the lot or parcel so that:
  - (a) They have the least impact on forest operations and accepted farming practices on nearby or adjoining 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, the dwelling and structures is minimized; and
  - (d) The risks associated with wildfire are minimized.

- (7) To satisfy the criteria in BCC 60.405(6), the Planning Official may require that new structures be sited close to existing roads, clustered near existing structures, and sited on that portion of the parcel least suited for growing trees.

[Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 2001-0174, Ord 2006-0214, Ord 2009-0232]

**60.410 Additional Siting Standards and Conditions for Dwellings.** All new dwellings allowed in the Forest Conservation Zone shall be sited in compliance with BCC Chapter 99, BCC 60.405 and the following additional standards:

- (1) A dwelling shall be placed at least thirty (30) feet from all property lines, and at least forty-five (45) feet from all roadways. Architectural features shall not project more than two (2) feet into a required setback.
- (2) Each dwelling shall be located at least 300 feet from property zoned for resource use, or shall conform to this standard to the greatest extent practical. This requirement shall not be applied to setbacks adjacent to an improved public road except when required by an approved conditional use permit.
- (3) Approval of a dwelling shall be subject to the following requirements:
  - (a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;
  - (b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;
  - (c) If the lot or parcel is more than 10 acres, the property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules.
  - (d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.
- (4) The dwelling will not be sited on a slope of greater than forty (40) percent.
- (5) The dwelling shall use a domestic water supply from a well or spring and a sewage disposal system as provided by Chapter 99.
- (6) The dwelling shall be located upon a parcel or lot within a fire protection district or is provided with residential fire protection by contract. If the County determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the County may authorize an alternative means for protecting the dwelling from fire hazards. 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 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.
- (7) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

- (8) The following siting standards shall apply where the residential density is greater than one dwelling per forty (40) acres in the peripheral big game range or one dwelling per eighty (80) acres in the major big game range, calculated on the basis of each 640 acre section or portion of the section within the game range:
- (a) Dwellings and structures shall be located near each other and existing roads.
  - (b) Dwellings and structures shall be located to minimize habitat conflicts and shall utilize least valuable habitat areas.
  - (c) Road development providing access to the dwelling shall be minimized.
- (9) A dwelling shall be sited on the least valuable wildlife habitat on the property, or clustered near dwellings on other parcels or lots in order to lessen the impact on wildlife habitat and help to maintain an overall density that is compatible with wildlife habitat management. In cases where dwellings are clustered, the 300-foot setback from adjacent property zoned for resource use may not be feasible. A dwelling shall also be sited to avoid intruding unnecessarily on areas free from existing roads and dwellings. The Planning Official shall balance these standards with the required siting and permit standards elsewhere in this code to minimize adverse impacts.
- (10) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. 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.
- (11) As a condition of approval, an applicant for a residence in the Forest Conservation Zone shall sign a declaratory statement consistent with BCC 60.220(2) to be recorded in the County Deed Records for the parcel or lot upon which the dwelling is constructed.

[Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 94-0103, Ord 2001-0174, Ord 2006-0214, Ord 2009-0232]

**Exhibit A**

**Declaration of Covenants, Conditions and Restrictions Form**

Whereas, the undersigned \_\_\_\_\_ hereinafter referred to as Declarant, is owner in fee simple of the property described in Exhibit A attached hereto and incorporated by reference herein and

Whereas, the Declarant desires to declare their intention to create certain covenants, conditions and restrictions in order to effectuate and comply with the requirements of Oregon Administrative Rule (OAR 660, Division 033).

Declarant hereby declares that all of the property described on Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions and restrictions:

It is not lawful to use the property described in this instrument for the construction or siting of a dwelling except for accessory farm dwellings; relative farm assistance dwellings; temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215 or to use any gross farm income earned on this lot or parcel to qualify another lot or parcel for the construction or siting of a primary farm dwelling.

These covenants, conditions and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions are located executes and records a release of the covenants, conditions and restrictions created by this instrument.

In witness whereof, the undersigned, being Declarant herein, has heretofore set their hand this \_\_\_\_\_ day of \_\_\_\_\_.

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

State of            )  
County            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_.

Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

# Chapter 61

## Open Space (OS)

**61.005 Purpose.** The Open Space Zone shall preserve and protect natural, scenic, or recreational resources by managing such resources primarily for open space and recreational purposes. The Open Space Zone shall only be applied upon application of the property owner. [Ord 26, Ord 90-0069]

**61.010 Standards of Application.** The Open Space Zone may be applied to the following types of areas:

- (1) Wetlands, as recorded on the U.S. Fish and Wildlife Service National Wetland Inventory Maps.
- (2) Privately owned wildlife refuge or sanctuary, as defined in ORS 501.045.
- (3) Land approved for open space use assessment under the provisions of ORS 308.740 to 308.790.
- (4) Land approved for riparian habitat protection under the provisions of ORS 308.025 and Chapter 720.
- (5) Open space area identified by the County or City Comprehensive Plan.
- (6) Historical, archaeological or geological sites. [Ord 26, Ord 90-0069, Ord 92-0092]

**61.105 Site Management Plan.** An application for a zone change to Open Space shall include a site management plan. Such plan shall limit the nature and type of uses allowed in the Open Space Zone consistent with the nature of the resource designed to be protected by the plan. The following information shall be represented on the site management plan:

- (1) A brief narrative of intent and proposed uses, including an adequate description of unique natural features or areas that may be located on site.
- (2) Site topography, drainage areas, creeks or ponds, and areas of major vegetation types.
- (3) Existing structures, improvements, roadway access and utilities, if any.
- (4) Existing land uses, ownership, property lines and building locations on adjoining property within 350 feet of the subject property.
- (5) Proposed uses for the subject site, including all proposed structures, vehicular and pedestrian circulation patterns and a site drainage plan; and
- (6) Any other appropriate information requested by the Planning Official. [Ord 26, Ord 90-0069]

**61.110 Criteria for Review of Plan.** The following criteria shall be used to evaluate whether the site management plan is consistent with the nature of the resource it is designed to protect:

- (1) The proposed uses will not result in the loss of rare, irretrievable, or irreplaceable natural features, or scientific opportunity;
- (2) The proposed uses will not disturb substantially unaltered natural features or areas, or areas possessing natural features;
- (3) The proposed uses will result in a public benefit which would be maximized on the subject site when compared to similar properties not possessing unique features;
- (4) Adequate buffers shall exist within the proposed open space zone to assure compatibility between proposed uses and surrounding farming and forestry uses, where applicable; and
- (5) The site management plan shall be applied along with other standards and requirements to determine if the proposed uses meet the intent of this zone. [Ord 26, Ord 90-0069]

**61.115 Amendment of an Adopted Plan.** Proposed changes to an approved site management plan shall be reviewed by the County in the same manner as the original approval. [Ord 26, Ord 90-0069]

**61.205 Permitted Uses.** The following uses are allowed in an Open Space Zone, subject to the limitations or requirements of a site management plan approved pursuant to this chapter:

- (1) A public or private park, recreation area, or open space use, including a hunting and fishing preserve.
- (2) A public campground or picnic sites and public playlot, playground or playfield.
- (3) A public boat launching and fishing facility.
- (4) A public bicycle and/or pedestrian path or trail system outside a County or public right-of-way.
- (5) An equestrian path or trail system.
- (6) A golf course, with a minimum of fifty (50) acres, excluding support buildings.
- (7) Farm use.
- (8) Forest use. [Ord 26, Ord 90-0069]

**61.305 Conditional Uses Approved by the Planning Official.** The following uses may be allowed in the Open Space Zone by conditional use permit approved by the Planning Official, subject to the site management plan submitted pursuant to this chapter:

- (1) One dwelling for a caretaker or watchman, in conjunction with a permitted use.
- (2) Temporary structures as may be required during construction of an authorized permanent structure. Such temporary structure shall be removed upon final inspection of the permanent structure by the Building Inspector.
- (3) Driving range not in conjunction with a golf course.
- (4) Support buildings in conjunction with a golf course. [Ord 26, Ord 90-0069]

**61.405 Minimum Parcel or Lot Size.** The minimum parcel or lot size shall be consistent with the site management plan. [Ord 26, Ord 90-0069]

**61.505 Siting Standards.** All structures allowed in the Open Space Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) The maximum building height for any dwelling shall be thirty-five (35) feet. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (2) A dwelling located within 200 feet of a forested area shall be provided with a spark arrestor on each chimney and a fire-retardant roof.
- (3) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line. [Ord 26, Ord 90-0069, Ord 92-0092]

## **Chapter 63**

### **Rural Residential (RR)**

**63.005 Purpose.** The Rural Residential Zone shall provide areas within Benton County where rural residential lifestyles can occur outside recognized urban areas without conflicting with agriculture and forestry uses. [Ord 26, Ord 90-0069]

**63.010 Application.** The Rural Residential Zone shall apply to areas outside urban areas on land generally unsuitable for resource use, or which are otherwise developed, committed to, or needed for rural residential use, subject to land capabilities to support residential use based on the carrying capacity of the land for water, sewage, roads, and natural hazards, etc. [Ord 26, Ord 90-0069]

**63.015 Transitional Areas.** Certain areas near urban growth boundaries are zoned Rural Residential/Transitional (RR/T), indicating that these areas may be added to the urban growth boundary in the future. [Ord 22P, Ord 26, Ord 90-0069]

#### **PERMITTED USES**

**63.105 Permitted Uses.** The following uses are allowed in the Rural Residential Zone:

- (1) Farm or forest use.
- (2) One dwelling per parcel. For the purposes of this section, “dwelling” includes a manufactured dwelling that complies with the manufactured dwelling standards in BCC 91.505 to 91.510, as well as all other applicable requirements of BCC Chapter 91.
- (3) Residential home.
- (4) Day care for fewer than thirteen children.
- (5) One manufactured dwelling 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, subject to the terms and conditions set forth in BCC 91.545 and 91.550. The hardship manufactured dwelling shall comply with all other applicable requirements of BCC Chapter 91, except the additional placement standards of BCC 91.510 shall not apply.
- (6) Home occupation.
- (7) Accessory use or structure.
- (8) Accessory dwelling unit on properties zoned Rural Residential and only within urban growth boundaries, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050. [Ord 2018-0286]

[Ord 26, Ord 90-0069, Ord 94-0104, Ord 97-0131, Ord 2018-0285, Ord 2018-0286]

#### **CONDITIONAL USES**

**63.205 Conditional Uses.** The following uses may be allowed in the Rural Residential Zone by conditional use permit approved by the Planning Official:

- (1) Park or recreational facility and greenway corridor acquisition.



- (2) Television or radio station cable television facility, transmitter or tower.
- (3) Public or private facility for the provision of power, water, or sewage disposal and associated structures and transmission lines.
- (4) Private airstrip.
- (5) Church, grange hall, community hall, or other similar non-profit community facility.
- (6) Commercial kennel.
- (7) School.
- (8) Residential facility.
- (9) Day care center.
- (10) Fire stations. [Ord 26, Ord 90-0069, Ord 97-0131, Ord 98-0136]

## **MINIMUM PARCEL OR LOT SIZES**

### **63.305 Minimum Parcel or Lot Size.**

- (1) The minimum parcel or lot size shall be specified by the suffix number following the "RR" designation on the Official Zoning Map:
  - (a) "RR-2" means two (2) acre minimum parcel or lot size. No new RR-2 zoning shall be established without taking an exception to Goal 14.
  - (b) "RR-5" means five (5) acre minimum parcel or lot size. No new RR-5 zoning shall be established without taking an exception to Goal 14.
  - (c) "RR-10" means ten (10) acre minimum parcel or lot size.
  - (d) "RR-20" means twenty (20) acre minimum parcel or lot size.
- (2) A minimum parcel or lot size shall be established for a given area based on existing development, impact on public services, carrying capacity of the land for water and sewage disposal, and impact on surrounding resource zones.
- (3) A planned unit development (PUD) may be approved in the Rural Residential zone, pursuant to the provisions of BCC Chapter 98 as modified by this subsection:
  - (a) A maximum of 10 dwelling units shall be developed as a PUD;
  - (b) None of the new lots or parcels shall be smaller than 2 acres;
  - (c) The development shall not be served by a new community water system, nor by any new extension of a sewer system from within an urban growth boundary or unincorporated community;
  - (d) The overall density of the development shall not exceed one dwelling for each unit of acreage specified in the zoning designation for the property.
  - (e) The PUD shall meet the criteria of BCC 55.215(1).
  - (f) For any open space or common area provided as a part of the PUD under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.
- (4) A partition may be allowed to create a parcel or parcels smaller than the minimum size specified in

subsection (1) if:

- (a) The parcel to be divided contains two or more permanent dwellings that were lawfully established prior to October 4, 2000, and that are deemed habitable pursuant to the criteria of BCC 55.140(4);
- (b) Each new parcel would contain at least one of those dwellings;
- (c) The partition would not create any vacant parcels upon which a new dwelling could be established.

[Ord 26, Ord 90-0069, Ord 96-0118, Ord 2007-0222]

**63.405 Siting Standards.** All structures allowed in the Rural Residential Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) A setback to a road right-of-way shall be at least twenty-five (25) feet and at least forty (40) feet from the edge of an existing roadway.
- (2) A side setback shall be at least eight (8) feet. If structures exist on an adjoining property, a minimum thirty (30) foot setback shall be maintained between the proposed structure and any existing structure on the adjoining property, unless the two dwellings are attached at the property line.
- (3) A rear setback shall be at least twenty-five (25) feet.
- (4) Architectural features shall not project more than two (2) feet into a required setback.
- (5) A non-residential structure shall not be built within a setback abutting a road. No setback is required for a non-residential structure of 120 square feet or less. A required side or rear setback for a non-residential structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (6) A structure which is not related to a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) A dwelling shall be located no closer than 300 feet from a resource zone, or conform to this standard to the greatest extent possible. If this is not feasible, the owner shall sign a declaratory statement to be recorded in the County Deed Records recognizing resource use of adjacent lands. This requirement shall not be applied to a setback adjacent to a public road, except when required by an approved conditional use permit.
- (8) A dwelling located within 200 feet of a forested area shall be provided with a spark arrestor on each chimney and a fire-retardant roof.
- (9) A minimum thirty (30) foot fire break shall be maintained at all times around structures located on a parcel or lot contiguous to land in the Forest Conservation Zone.
- (10) A structure shall not exceed forty (40) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code. [Ord 26, Ord 90-0069, Ord 92-0092, Ord 96-0118]

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## Chapter 64

### Urban Residential (UR)

**64.005 Purpose.** The Urban Residential Zone shall provide for the establishment of areas suitable for future urban density residential development. [Ord 26, Ord 90-0069]

**64.010 Application.** The Urban Residential Zone shall be applied in unincorporated areas inside an urban growth boundary according to the Comprehensive Plan. [Ord 26, Ord 90-0069]

**64.105 Permitted Uses.** The following uses are allowed in the Urban Residential Zone:

- (1) One dwelling per parcel. For the purposes of this section, “dwelling” includes a manufactured dwelling that complies with the manufactured dwelling placement in BCC 91.505 and 91.510, as well as all other applicable requirements of BCC Chapter 91.
- (2) One manufactured dwelling per space in a mobile home or manufactured dwelling park. The manufactured dwelling shall comply with the minimum placement standards for a Manufactured Dwelling in 91.515. The manufactured dwelling in an approved park shall comply with the applicable manufactured dwelling standards in Chapter 91, except that additional placement standards of BCC 91.510 shall not apply, and BCC 91.515 shall be applicable.
- (3) Home occupation.
- (4) Day care for fewer than thirteen children.
- (5) One manufactured dwelling 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, subject to the terms and conditions set forth in 91.502, 91.505, BCC 91.545 and 91.550. The hardship manufactured dwelling shall comply with all other applicable requirements standards of Chapter 91, except the additional placement standards of BCC 91.510 shall not apply.
- (6) Residential home.
- (7) Farm or forest use except for feed lots, except as prohibited or limited by the provisions of Chapters 83 and 88.
- (8) Accessory use or structure.
- (9) Fire stations or other public facilities rendering a public service to the community when located on an arterial or collector road as designated in the County’s Comprehensive Plan.
- (10) Natural area, open space, or acquisition of greenway corridor.
- (11) Accessory dwelling unit, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050. [Ord 2018-0286]

[Ord 26, Ord 90-0069, Ord 94-0104, Ord 97-0131, Ord 98-0136, Ord 2005-0209, Ord 2005-0210, Ord 2014-0264, Ord 2018-0285, Ord 2018-0286]

**64.205 Conditional Uses.** The following uses may be allowed in the Urban Residential Zone by conditional use permit approved by the Planning Official:

- (1) Developed park or recreational facility
- (2) Television or radio station, cable television facility, transmitter or tower.
- (3) Dam, power plant, transmission line and transmission stations, together with associated structures.
- (4) Water supply, water treatment facility, wastewater treatment facility, or water or wastewater

transmission facilities.

- (5) Operation conducted for the exploration, mining and processing of geothermal resources, aggregate, and other mineral resources, or other subsurface resources.
- (6) Solid waste pickup and transfer centers licensed pursuant to BCC Chapter 23.
- (7) Mobile home or manufactured dwelling park, recreational vehicle park.
- (8) Residential facility.
- (9) Day care center.
- (10) One duplex as the only permanent dwelling on a parcel or lot.
- (11) A public or private school.
- (12) Fire stations or other public facilities rendering a public service to the community that are not located on an arterial or collector road as designated in the County's Comprehensive Plan.
- (13) Church, grange hall, community hall, or other similar non-profit community facility.

[Ord 26, Ord 90-0069, Ord 94-0104, Ord 96-0118, Ord 98-0134, Ord 99-0146, Ord 2005-0209, Ord 2005-0210, Ord 2014-0264]

**64.210 Conditional Uses Approved by the Planning Commission.** A cemetery may be allowed in the Urban Residential Zone by conditional use permit approved by the Planning Commission. [Ord 26, Ord 90-0069]

#### **64.305 Minimum Parcel or Lot Size; and Density.**

- (1) The minimum parcel or lot size, or density, shall be specified by the suffix number following the "UR" designation on the Official Zoning Map:
  - (a) "UR-1" means one (1) acre minimum parcel or lot size.
  - (b) "UR-5" means five (5) acre minimum parcel or lot size, except in the Corvallis Urban Growth Boundary it shall mean one parcel or lot may be created per five (5) acres of gross area, subject to the Planned Unit Development standards in Chapter 100 [Ord 98-0141].
  - (c) "UR-10" means ten (10) acre minimum parcel or lot size, except in the Corvallis Urban Growth Boundary it shall mean one parcel or lot may be created per ten (10) acres of gross area, subject to the Planned Unit Development standards in Chapter 100 [Ord 98-0141].
  - (d) "UR-50" means fifty (50) acre minimum parcel or lot size, except in the Corvallis Urban Growth Boundary it shall mean one parcel or lot may be created per fifty (50) acres of gross area, subject to the Planned Unit Development standards in Chapter 100 [Ord 98-0141].
- (2) **Non-Standard Parcel or Lot Size for Facilities Rendering a Public Service.**
  - (a) A parcel or lot may vary from the standard size requirements of the zone if:
    - (A) The use of the parcel or lot will be:
      - (i) As allowed pursuant to BCC 64.105(9) or (10) or BCC 64.205(1) or (12), and that is publicly owned and renders a public service to the community; or
      - (ii) As allowed pursuant to BCC 64.205(3), (4), or (6), and that renders an important utility service to the general community, not only the immediately surrounding neighborhood;
    - (B) The proposed size and location of the parcel or lot will not have significant adverse impact on public health or safety, the uses on adjacent property, the character of the area, with the purpose of the zone, nor the efficient provision of infrastructure and conversion to urban densities.

- (C) The parcel or lot approved pursuant to this section shall include the least amount of land necessary to accommodate the approved intended use.
- (b) The applicant shall submit site development plans and narrative substantiating the size requirement of the particular use and the necessary location of the parcel or lot, as well as an urban conversion plan as described in BCC 64.310 or 64.320 for the parent parcel. The County shall obtain input from the City regarding the urban conversion plan, the proposed location of the non-standard parcel or lot size, and other City-related issues.
- (c) Location of the parcel or lot.
  - (A) The parcel or lot shall be clustered to the extent practicable. Nonclustering may be allowed to decrease negative impacts from adjacent property uses and to increase efficiencies in land use and future urban conversion.
  - (B) The location of the non-standard size parcel or lot and its property lines shall not significantly reduce ideal options for the future location of urban roads or services, or preclude basic development options on adjacent properties.
- (d) The water and/or sewage disposal requirements may be waived for the proposed parcel or lot pursuant to BCC 99.835 and/or 99.735.
- (e) To ensure government agency or public utility ownership of the non-standard size parcel or lot, the plat or survey shall not be signed by the Planning Official until the appropriate transfer documents are submitted by the applicant. Benton County shall record the transfer documents at the same time as the plat or survey.
- (f) For a parcel or lot created pursuant to this section, the property owner shall sign a deed covenant to be recorded into the County Deed Records prior to creation of the parcel or lot prohibiting its use for residential development or any use other than allowed pursuant to this section, until the property is annexed to the city and the County, in consultation with the City, releases the covenant.
- (g) For a use allowed pursuant to BCC 64.105(9) or (10) or BCC 64.205(1) or (12), that is publicly owned and renders a public service to the general community, not only the immediately surrounding community, the land area included in the non-standard size parcel or lot shall not be subtracted from the gross acreage of the subject property for purposes of calculating the number of allowable parcels or lots pursuant to BCC 100.205(7)(a).
- (h) For a use allowed pursuant to BCC 64.205(3) or (4) the land area included in the non-standard size parcel or lot shall not be subtracted from the gross acreage of the subject property for purposes of calculating the number of allowable parcels or lots pursuant to BCC 100.205(7)(a) if the Planning Official determines that the utility service provides an essential service to the general community and that the proposed location is necessary to provide that service.
- (i) Creation of a parcel under this section does not disqualify the parent parcel from the density bonus provision of BCC 100.205(7)(b); however, land area that, pursuant to subsection (2)(g) or (h) of this section, is not subtracted from the gross acreage shall not be used as the basis for a density bonus.
- (j) Creation of a parcel under this Section does not disqualify the parent parcel from the one-time exemption to the maximum parcel size under BCC 100.205(6)(a)(A). [Ord 2012-0244, Ord 2014-0264].
- (3) All land divisions in the Corvallis Urban Fringe Area, including partitions, subdivisions, and planned unit developments shall comply with the standards contained in BCC Chapters 83, 88, and 100.
- (4) **Bonus Parcel.** The opportunity for a bonus parcel is offered by Benton County as an incentive to encourage voluntary preservation of natural resources. A bonus parcel is not a matter of right.



- (a) Within the UR-5, UR-10 and UR-50 zones of the Corvallis Urban Growth Boundary, a parcel existing as of December 31, 2004, that is larger than the minimum parcel size of subsection (1) of this section but contains less than two times that minimum parcel or lot size may be divided once to create an additional parcel of 20,000 square feet or less if the criteria in subsection (A) through (C) are met.
  - (A) To qualify the property for creation of this parcel, the property owner shall establish permanent protection for the portion of the subject lot or parcel that has been designated as Highly Protected Natural Resource on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map or Significant Vegetation Map, and the Highly Protected area equals or exceeds the larger of the following: two acres, or 30% of the total acreage of the subject property. Permanent protection shall be by one of the following means:
    - (i) A conservation easement benefiting, or a gift to, a governmental land management agency or nonprofit corporation organized for the purpose of land or environmental conservation. The applicant shall provide a letter from the benefiting entity demonstrating intent to accept the proposed easement or gift and to manage the land to preserve and/or enhance the natural feature functions identified on the Corvallis Riparian Corridors and Wetlands Map or Significant Vegetation Map, contingent on approval of the development proposal;
    - (ii) Dedication to Benton County. The applicant shall provide a letter from the Board of Commissioners demonstrating intent to accept the proposed dedication, contingent on approval of the development proposal. Benton County will place priority on accepting lands consistent with the mission of the Benton County Parks System Comprehensive Plan or other adopted plans; or
    - (iii) Dedication, or reservation for dedication, to the City of Corvallis. The applicant shall provide a letter from the City of Corvallis stating intent to accept the proposed reservation, contingent on approval of the development proposal. A reservation for dedication shall include use restrictions to ensure the natural features are preserved prior to dedication;
  - (B) The proposed bonus parcel is approved through the criteria and procedures for a conditional use permit (BCC 53.205 through 53.235). The specific location and dimensions of the proposed parcel shall be presented by the applicant.
  - (C) The new parcel shall share access with the existing parcel if doing so would reduce impact to mapped natural features shown on the Corvallis Urban Fringe Natural Hazards Map and/or Riparian Corridors and Wetlands Map.
- (b) The right to create this additional lot or parcel may be transferred to any UR-zoned property within the Corvallis Urban Fringe, provided the receiving location is approved pursuant to subsection (3)(a)(B) of this section and provided the additional parcel will not impact natural features shown on the Corvallis Urban Fringe Natural Hazards Map, Riparian Corridors and Wetlands Map, and Significant Vegetation Map. Transferred rights will be established through the notice of conditional use approval referencing both the receiving and sending parent parcels.
- (c) The provisions allowing a bonus parcel shall not be available to a property which has been granted compensation or waiver of land use regulation pursuant to Ballot Measure 37.
- (d) For any property obtaining a bonus parcel pursuant to this section, the property owner shall sign a covenant waiving all right to claims for compensation or waiver of land use regulation pursuant to Ballot Measure 37.

[Ord 26, Ord 90-0069, Ord 96-0118, Ord 98-0141, Ord 2005-0209, Ord 2005-0210, Ord 2012-0244]

### **64.310 Conditions to Land Divisions in the Corvallis Urban Fringe.**



- (1) All land divisions in the Corvallis Urban fringe shall be conditioned upon the property owner recording a covenant consenting to annex when the property becomes contiguous to the City.
- (2) An applicant for a land division in the Urban Residential Zone within the Corvallis Urban Fringe shall submit an urban conversion plan showing possible future urban development. The urban conversion plan shall show arterial and perimeter streets, road rights-of-way, drainageways, utility easements, future property divisions at urban densities, and Natural Resources and Natural Hazards protected by Corvallis Comprehensive Plan Natural Resource and Natural Hazard Overlays. Additionally, if upon annexation the site will be subject to the City of Corvallis Minimum Assured Development area (MADA) provisions outlined in the Corvallis Land Development Code Chapter 4.11, the urban conversion plan shall show the protected and developable areas consistent with those MADA provisions. All dwellings and all structures requiring building permits shall be placed within boundaries of the future parcels or lots shown on the urban conversion plan and shall meet urban setbacks of the City of Corvallis Land Development Code. The urban conversion plan shall be referred to the City of Corvallis for review and recommendation. The urban conversion plan shall be binding on future property owners, until such time as an alternative urban conversion plan is submitted by the property owner and approved by the County in consultation with the City, or the property is annexed to the City. In unusual circumstances, the urban conversion plan requirements may be modified by the Planning Official in consultation with City of Corvallis Public Works and Planning. [Ord 26, Ord 90-0069, Ord 96-0118, Ord 2012-0244]

**64.315** Deleted [Ord 26, Ord 90-0069, Ord 96-0118, Ord 98-0141]

**64.320 Land Divisions in the Philomath Urban Fringe.** An applicant for a land division in the Urban Residential Zone in the Philomath Urban Fringe shall submit an urban conversion plan showing possible future urban development. The urban conversion plan shall show arterial and perimeter streets, road right-of-ways, drainageways, utility easements, and future property divisions at urban densities. All dwellings and all structures requiring building permits shall be placed within boundaries of future lots or parcels as shown on the urban conversion plan and shall meet urban setbacks of the City of Philomath Zoning Ordinance. The conversion plan shall be referred to the City of Philomath for review and recommendation. The urban conversion plan shall be binding on future property owners, until such time as an alternative urban conversion plan is submitted by the property owner and approved by the County in consultation with the City, or the property is annexed to the City. In unusual circumstances, the urban conversion plan requirements may be modified by the Planning Official in consultation with City of Philomath Public Works and Planning. [Ord 26, Ord 90-0069, Ord 96-0118, Ord 2012-0244]

## **SITING STANDARDS**

**64.350 Siting Standards.** All structures allowed in the Urban Residential Zone shall be sited in compliance with the applicable provisions of BCC Chapter 83 (Floodplain Management Overlay), BCC Chapter 88 (Natural Features Overlay in the Corvallis Urban Fringe), BCC Chapter 99 (General Development Standards), and the following additional standards in instances when they are more restrictive than the provisions of BCC Chapters 83, 88, and 99, as applicable:

- (1) A setback to a road right-of-way shall be at least twenty-five (25) feet and at least forty (40) feet from the edge of an existing roadway.
- (2) A side setback shall be at least eight (8) feet.
- (3) A rear setback shall be at least twenty-five (25) feet.
- (4) Architectural features shall not project more than two (2) feet into a required setback.
- (5) A non-residential structure shall not be built within a setback abutting a road. No setback is required for structures of 120 square feet or less. A side or rear setback for a non-residential structure may be reduced to three (3) feet if that structure:

- (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (6) A structure which is not related to a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) A structure shall not exceed forty (40) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (8) A maximum of twenty-five percent (25%) of existing natural riparian vegetation within twenty-five feet of the ordinary high water line of the Marys River outside of the Corvallis urban growth boundary, by area, may be removed for any reason within the riparian setback area. Additional land may be cleared of riparian vegetation in order to:
- (a) Remove dead or diseased vegetation, or vegetation which constitutes a hazard to public safety or a threat to existing healthy indigenous vegetation;
  - (b) Construct pedestrian access (pathways) to the waterway;
  - (c) Install or maintain an artificial or structural shoreline stabilization, provided that natural erosion control measures or other non-structural solutions are not feasible and applicable state and federal standards are met; or
  - (d) Remove blackberry vines, Scotch Broom, or other noxious vegetation as defined by the Oregon Department of Agriculture, provided that such vegetation is replaced with other more suitable vegetation.
- (9) A dwelling located within 200 feet of a forested area shall be provided with a spark arrestor on each chimney and a fire-retardant roof.
- (10) A minimum thirty (30) foot fire break shall be maintained at all times around structures located on a parcel or lot contiguous to land in the Forest Conservation Zone. [Ord 26, Ord 90-0069, Ord 91-0082, Ord 92-0092, Ord 93-0097, Ord 96-0118, Ord 2005-0209, Ord 2005-0210]

## Chapter 65

### Philomath Low-Density Residential Zone (PR-1)

**65.005 Purpose.** The Philomath Low-Density Residential Zone is intended to provide for urban development, primarily single-family dwellings, within the Philomath Urban Growth Boundary prior to annexation through the provision of urban services in accordance with a municipal service agreement. [Ord 90-0069]

**65.010 Application.** The Philomath Low-Density Residential Zone shall apply to unincorporated areas designated for Low Density Residential Development in the Philomath Comprehensive Plan which are provided municipal water and sewer service and are subject to a delayed annexation agreement or municipal service agreement. [Ord 90-0069]

**65.015 Permitted Uses.** The following uses are allowed in the Philomath Low-Density Residential Zone:

- (1) Single-family dwelling.
- (2) Home occupation.
- (3) Day care for fewer than thirteen children.
- (4) Residential home.
- (5) Duplex, on corner lots or parcels only.
- (6) Accessory use or structure.
- (7) Public utilities.
- (8) Accessory dwelling unit, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050. [Ord 90-0069, Ord 2018-0285, Ord 2018-0286]

**65.020 Conditional Uses.** The following uses may be allowed in the Philomath Low Density Residential Zone by conditional use permit approved by the Planning Official:

- (1) Church or community center.
- (2) Park, playground, fire station or library.
- (3) Nursery school or day care center.
- (4) Nursing home.
- (5) Golf course, country club, or other recreational or athletic club.
- (6) Public or private school.
- (7) Professional office, except veterinarian.
- (8) Mobile home or manufactured dwelling park. [Ord 90-0069]

**65.025 Minimum Parcel or Lot Size.**

- (1) For parcels or lots in the Philomath Low-Density Residential Zone which are subject to a delayed annexation agreement or municipal services agreement, the minimum parcel or lot size shall be determined by the type of use as follows:
  - (a) Single-family dwelling: 7,000 square feet.
  - (b) All conditional uses: 7,000 square feet.
  - (c) Duplex: 5,000 square feet for each dwelling unit.

- (2) Parcels or lots in the Philomath Low-Density Residential Zone which are not subject to a delayed annexation agreement or a municipal services agreement shall have a five (5) acre minimum parcel or lot size. [Ord 90-0069, Ord 96-0118]

**65.030 Siting Standards.** All structures allowed in the Philomath Low-Density Residential Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) A setback to a road right-of-way shall be at least fifteen (15) feet, except an attached or detached garage shall be at least twenty (20) feet.
- (2) A side setback shall be at least eight (8) feet, unless a common or impervious wall is provided in conformance with the zero lot line development standards provided in BCC 65.035.
- (3) A rear setback shall be at least fifteen (15) feet.
- (4) Obstructions greater than two and one-half (2.5) feet in height shall not be located within twenty (20) feet of an intersection of two streets or a street and railroad, or within ten (10) feet of an intersecting street and alley.
- (5) A non-residential structure shall not be built within a setback abutting a road. No setback is required for structures of 120 square feet or less. A side or rear setback for a non-residential structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (6) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) A structure shall not exceed thirty-five (35) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (8) Buildings in complexes on a parcel or lot shall be separated at least sixteen (16) feet from other buildings or one foot for each foot of building height, whichever is greater.
- (9) All buildings on a parcel or lot shall occupy not more than thirty-five percent (35%) of the parcel or lot area.
- (10) All off-street parking areas and road approaches shall be paved with an asphaltic concrete or Portland cement concrete. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

**65.035 Zero Lot Line Development Standards.**

- (1) Two single-family residences may be attached at a common wall if:
  - (a) Appropriate easements for common maintenance have been recorded.
  - (b) The common wall complies with all building code requirements.
- (2) Where no common wall is utilized, the side setback for a single-family residence may be reduced to zero if:
  - (a) The wall of the residence with the reduced side setback is impervious with no penetrations including windows, screens or vents, and complies with all building code requirements.
  - (b) The adjoining residence is located at least fifteen (15) feet from the impervious wall.
  - (c) An easement for the maintenance of the impervious wall has been obtained from the

adjoining property.

- (d) Overhangs and other architectural features attached to the impervious wall do not extend into the adjoining side setback.
- (e) The character and design of the impervious wall is continuous.
- (f) The residence with the reduced side setback diverts rainwater runoff away from the adjoining property. [Ord 90-0069]

## **Philomath Medium-Density Residential Zone (PR-2)**

**65.105 Purpose.** The Philomath Medium-Density Residential Zone is intended to provide for urban development of one to four family dwellings within the Philomath Urban Growth Boundary prior to annexation through the provision of urban services in accordance with a municipal service agreement. [Ord 90-0069]

**65.110 Standards for Application.** The Philomath Medium-Density Residential Zone shall apply to unincorporated areas designated for Medium Density Residential Development in the Philomath Comprehensive Plan which are provided municipal water and sewer service and are subject to a delayed annexation agreement or municipal service agreement. [Ord 90-0069]

**65.115 Permitted Uses.** The following uses are allowed in the Philomath Medium-Density Residential zone subject to applicable siting standards:

- (1) Single-family dwelling.
- (2) Home occupation.
- (3) Day care for fewer than thirteen children.
- (4) Residential home.
- (5) Duplex, triplex, or fourplex.
- (6) Residential facility.
- (7) Accessory use or structure.
- (8) Public utilities.
- (9) Manufactured dwelling.
- (10) Accessory dwelling unit, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050. [Ord 90-0069, Ord 2018-0285, Ord 2018-0286]

**65.120 Conditional Uses.** The following uses may be allowed in the Philomath Medium Density Residential Zone by conditional use permit approved by the Planning Official:

- (1) All uses identified in BCC 65.020.
- (2) Condominium conversion of an existing duplex, triplex, or fourplex. [Ord 90-0069]

### **65.125 Minimum Parcel or Lot Size.**

- (1) For parcels or lots in the Philomath Medium-Density Residential Zone which are subject to a delayed annexation agreement or municipal services agreement, the minimum parcel or lot size shall be determined according to the type of use as follows:
  - (a) Single-family dwelling: 5,000 square feet.
  - (b) All conditional uses: 5,000 square feet.

- (c) Duplex, triplex or fourplex: 3,600 square feet for each dwelling unit.
- (2) Parcels or lots in the Philomath Medium-Density Residential Zone which are not subject to a delayed annexation agreement or a municipal services agreement shall have a five (5) acre minimum parcel or lot size. [Ord 90-0069, Ord 96-0118]

**65.130 Siting Standards.** All structures allowed in the Philomath Medium-Density Residential Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) A setback to a road right-of-way shall be at least fifteen (15) feet, except a garage shall be at least twenty (20) feet.
- (2) A side setback shall be at least eight (8) feet, unless a common or impervious wall is provided on a lot line, in conformance with zero lot line development standards in BCC 65.135.
- (3) A rear setback shall be at least fifteen (15) feet.
- (4) No obstructions including walls, structures, fences or shrubs shall extend greater than two and one-half (2.5) feet in height within twenty (20) feet of a point of two intersecting streets or a street and railroad or within ten (10) feet of a point of an intersecting street and alley.
- (5) A non-residential structure shall not be built within a setback abutting a road. No setback is required for structures of 120 square feet or less. A side or rear setback for a non-residential structure may be reduced to three (3) feet if that structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (6) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) A structure shall not exceed thirty-five (35) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (8) Buildings in complexes on a parcel or lot shall be separated at least sixteen (16) feet from other buildings or one foot for each foot of building height, whichever is greater.
- (9) All buildings on a parcel or lot shall occupy not more than forty percent (40%) of the parcel or lot area.
- (10) A minimum of twenty percent (20%) of the parcel or lot area, or 1,000 square feet, whichever is greater, exclusive of any driveway, roadway, parking area or public easement, shall be landscaped with plantings and ground cover as a usable open space area.
- (11) Central garbage collection areas and other accessory mechanical and service facilities shall be screened with a sight obscuring fence or landscaping.
- (12) All off-street parking areas and road approaches shall be paved with an asphaltic concrete or Portland cement concrete. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

**65.135 Zero Lot Line Development Standards.**

- (1) Two single-family residences may be attached at a common wall if:
  - (a) Appropriate easements for common maintenance have been recorded.
  - (b) The common wall complies with all building code requirements.



- (2) Where no common wall is utilized, the side setback for a single-family residence may be reduced to zero if:
  - (a) The wall of the residence with the reduced side setback is impervious with no penetrations including windows, screens or vents, and complies with all building code requirements.
  - (b) The adjoining residence is located at least fifteen (15) feet from the impervious wall.
  - (c) An easement for the maintenance of the impervious wall has been obtained from the adjoining property.
  - (d) Overhangs and other architectural features attached to the impervious wall do not extend into the adjoining side setback.
  - (e) The character and design of the impervious wall is continuous.
  - (f) The residence with the reduced side setback diverts rainwater runoff away from the adjoining property. [Ord 90-0069]

### **Philomath High-Density Residential Zone (PR-3)**

**65.205 Purpose.** The Philomath High-Density Residential Zone is intended to provide for urban development of multi-family dwellings within the Philomath Urban Growth Boundary prior to annexation through the provision of urban services in accordance with a municipal service agreement. [Ord 90-0069]

**65.210 Standards for Application.** The Philomath High-Density Residential Zone shall apply to unincorporated areas designated for High-Density Residential development in the Philomath Comprehensive Plan which are provided municipal water and sewer service and are subject to a delayed annexation agreement or municipal service agreement. [Ord 90-0069]

**65.215 Permitted Uses.** The following uses are allowed in the Philomath High-Density Residential Zone:

- (1) Single-family dwelling.
- (2) Home occupation.
- (3) Day care for fewer than thirteen children.
- (4) Residential home.
- (5) Multi-family dwelling.
- (6) Residential facility.
- (7) Accessory use or structure.
- (8) Public utilities.
- (9) Manufactured dwelling.
- (10) Accessory dwelling unit, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050. [Ord 90-0069, Ord 2018-0285, Ord 2018-0286]

**65.220 Conditional Uses.** The following uses may be allowed in the Philomath High-Density Residential Zone by conditional use permit approved by the Planning Official:

- (1) All uses identified in BCC 65.020.
- (2) Condominium conversion of an existing duplex, triplex, or fourplex.
- (3) Club, lodge or fraternal organization. [Ord 90-0069]

**65.225 Minimum Parcel or Lot Size.**



- (1) For parcels or lots in the Philomath High-Density Residential Zone which are subject to a delayed annexation agreement or municipal services agreement, the minimum parcel or lot size shall be determined according to the type of use as follows:
  - (a) Single-family dwelling: 5,000 square feet.
  - (b) All conditional uses: 5,000 square feet.
  - (c) Duplex, triplex or fourplex: 3,600 square feet for each dwelling unit.
  - (d) Any other multi-family dwelling: 2,500 square feet per dwelling unit.
- (2) Parcels or lots in the Philomath High-Density Residential Zone which are not subject to a delayed annexation agreement or a municipal services agreement shall have a five (5) acre minimum parcel or lot size. [Ord 90-0069, Ord 96-0118]

**65.230 Siting Standards.** All structures allowed in the Philomath High-Density Residential Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) A setback to a road right-of-way shall be at least fifteen (15) feet, except a garage shall be at least twenty (20) feet.
- (2) A side setback shall be at least eight (8) feet, unless a common or impervious wall is provided in conformance with zero lot line development standards provided in BCC 65.235.
- (3) A rear setback shall be at least fifteen (15) feet.
- (4) No obstructions including walls, structures, fences or shrubs shall extend greater than two and one-half (2.5) feet in height within twenty (20) feet of a point of two intersecting streets or a street and railroad or within ten (10) feet of a point of an intersecting street and alley.
- (5) A non-residential structure shall not be built within a setback abutting a road. No setback is required for structures of 120 square feet or less. A side or rear setback may be reduced to three (3) feet for a non-residential structure if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (6) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) A structure shall not exceed thirty-five (35) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (8) Buildings in complexes on a parcel or lot shall be separated at least sixteen (16) feet from other buildings or one foot for each foot of building height, whichever is greater.
- (9) The courtyard area of a garden apartment building shall be a minimum width of sixteen (16) feet or one and one-quarter (1.25) feet for each foot of building height, whichever is greater.
- (10) A minimum of twenty percent (20%) of the parcel or lot area, or 1,000 square feet, whichever is greater, exclusive of any driveway, roadway, parking area or public easement, shall be landscaped with plantings and ground cover as a usable open space area.
- (11) Central garbage collection areas and other accessory mechanical and service facilities shall be screened with a sight obscuring fence or landscaping.

- (12) All off-street parking areas and road approaches shall be paved with an asphaltic concrete or Portland cement concrete. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

**65.235 Zero Lot Line Development Standards.**

- (1) Two single-family residences may be attached at a common wall if:
- (a) Appropriate easements for common maintenance have been recorded.
  - (b) The common wall complies with all building code requirements.
- (2) Where no common wall is utilized, the side setback for a single-family residence may be reduced to zero if:
- (a) The wall of the residence with the reduced side setback is impervious with no penetrations including windows, screens or vents, and complies with all building code requirements.
  - (b) The adjoining residence is located at least fifteen (15) feet from the impervious wall.
  - (c) An easement for the maintenance of the impervious wall has been obtained from the adjoining property.
  - (d) Overhangs and other architectural features attached to the impervious wall do not extend into the adjoining side setback.
  - (e) The character and design of the impervious wall is continuous.
  - (f) The residence with the reduced side setback diverts rainwater runoff away from the adjoining property. [Ord 90-0069]

## Chapter 66

### Village Residential Zone (VR)

**66.005 Purpose.** The Village Residential Zone shall provide areas within Benton County where rural village lifestyles can occur within recognized and planned Rural Unincorporated Communities (RUCs). This zone shall recognize the rural village character of RUC's, and the need for greater flexibility to allow these communities to maintain their viability. [Ord 2008-0226]

**66.010 Application.** The Village Residential Zone shall apply to areas outside urban areas on land that is within the boundaries of recognized and planned RUCs.

**66.020 Notification of Fire District.** In consideration of the small lot size, proximity of forested area, and density of structures in the Village Residential Zone, the Community Development Department shall notify the applicable fire district at the time of application for a building permit, establishment of a permitted use, or application for a conditional use permit.

**66.105 Permitted Uses.** The following uses are allowed in the Village Residential Zone, after notification of the Community Development Department:

- (1) Farm or forest use.
- (2) One dwelling per parcel. For the purposes of this section, "dwelling" includes a manufactured dwelling that complies with the manufactured dwelling standards in BCC 91.505 to 91.510, as well as all other applicable requirements of BCC Chapter 91.
- (3) Residential home.
- (4) Day care for fewer than thirteen children.
- (5) Home occupation.
- (6) One manufactured dwelling 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, subject to the terms and conditions set forth in BCC 91.545 and 91.550. The hardship manufactured dwelling shall comply with all other applicable requirements of BCC Chapter 91, except the additional placement standards of BCC 91.510 shall not apply.
- (7) Accessory use or structure without a legally established primary structure or use. .
- (8) Undeveloped open space.
- (9) Bed and Breakfast establishments or inns limited to 35 rooms or less.
- (10) Roadside stands for produce or nursery products grown on the premises, and/or foods prepared on the premises.
- (11) Art or craft gallery in a building or buildings not exceeding 4,000 square feet.
- (12) Cottage Industry, not including the commercial growing, processing, wholesaling or retailing of marijuana. [Ord 2015-0271]

(DEFINITION: COTTAGE INDUSTRY: A business or business-related activity that is carried on within either a dwelling or a building accessory to that dwelling, which employs no more than two people in addition to those residing in the dwelling , and which has limited impacts on the surrounding properties. Deliveries and customer visitations are limited to the hours between 8:00 a.m. and 6:00 p.m. Outdoor storage is allowed if it is similar to what legally occurs in the neighborhood, and accessory structures conform to the character of the neighborhood. Signs up to six (6) square feet are allowed.)

## CONDITIONAL USES

**66.205 Conditional Uses.** The following uses may be allowed in the Village Residential Zone by conditional use permit approved by the Planning Official:

- (1) Park or recreational facility.
- (2) Public or private facility for the provision of power, water, or sewage disposal and associated structures and transmission lines.
- (3) Church, grange hall, community hall, nonprofit meeting hall, or other similar non-profit community facility.
- (4) Facility for performance of theatrical, film, music or dance productions, limited to 100 seats.
- (5) Public or private school.
- (6) Residential facility (care facility).
- (7) Day care center.
- (8) Fire station.
- (9) Multi-family dwelling.
- (10) Any use not listed here, but similar to the uses listed above, if it can be determined by the Planning Official to meet the Conditional Use criteria, not including the commercial growing, processing, wholesaling or retailing of marijuana. [Ord 2015-0271]
- (11) Any use listed in section 75.105, and 75.110, Village Commercial permitted uses, not including the commercial growing, processing, wholesaling or retailing of marijuana. [Ord 2015-0271]

## MINIMUM PARCEL OR LOT SIZES

**66.305 Minimum Parcel or Lot Size.** The minimum parcel or lot size shall be 5000 square feet.

- (1) A planned unit development (PUD) may be approved in the Village Residential zone, pursuant to the provisions of BCC Chapter 98 as modified by this subsection:
  - (a) None of the new lots or parcels shall be smaller than 5000 square feet;
  - (b) The development shall be served by the community water and sewer system; and
  - (c) For any open space or common area provided as a part of the PUD under this subsection, the owner shall submit proof of irrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

**66.405 Siting Standards.** All structures allowed in the Village Residential Zone shall be sited in compliance with the following standards:

- (1) A setback to a road right-of-way shall be at least fifteen (15) feet and at least twenty (20) feet from the edge of an existing roadway.
- (2) A side setback shall be at least three (3) feet. If structures exist on an adjoining property, a minimum ten (10) foot setback shall be maintained between the proposed structure and any existing structure on the adjoining property, unless the two dwellings are attached at the property line. Zero lot line development is allowed.
- (3) A rear setback shall be at least fifteen (15) feet.

- (4) Architectural features shall not project more than two (2) feet into a required setback.
- (5) A non-residential structure shall not be built within a setback abutting a road. No setback is required for a non-residential structure of 120 square feet or less
- (6) A structure which is not related to a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) A dwelling on property adjacent to a resource zone shall be located as far from the resource zone as practicable, considering other required setbacks, topography, drainage, resource-zone setbacks on neighboring properties, and other factors, as determined by the Planning Official. Prior to approval of such a dwelling the owner shall sign a declaratory statement to be recorded in the County Deed Records recognizing resource use of adjacent lands.
- (8) A dwelling located within 200 feet of a forested area shall be provided with a spark arrestor on each chimney and a fire-retardant roof.
- (9) A minimum thirty (30) foot fire break shall be maintained at all times around structures located on a parcel or lot contiguous to land in the Forest Conservation Zone.
- (10) A structure shall not exceed forty (40) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code. [Ord 26, Ord 90-0069, Ord 92-0092, Ord 96-0118]

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# **Chapter 67**

*Reserved for Expansion*



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## **Chapter 68**

### **Urban Commercial Zone (UC)**

**68.005 Purpose.** The Urban Commercial Zone shall establish standards for commercial activity inside urban growth boundaries within Benton County. [Ord 26, Ord 90-0069, Ord 2007-0222]

**68.010 Application.** The Urban Commercial Zone shall apply to areas designated Commercial on the adopted Comprehensive Plan Map located inside urban growth boundaries. [Ord 26, Ord 90-0069, Ord 2007-0222]

**68.105 Permitted Uses.** The following uses are allowed in the Urban Commercial Zone:

- (1) Professional office, clinics and personal service outlet.
- (2) Restaurant, tavern, motel, hotel, and membership clubs.
- (3) Service station.
- (4) Sale of goods.
- (5) Vehicle parking lot.
- (6) One dwelling required for the employer or employee for management or safeguarding of the commercial use.
- (7) Residential home.
- (8) One manufactured dwelling 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.
- (9) Day care for fewer than thirteen children.
- (10) Farm use or forest use.
- (11) Accessory use or structure. [Ord 26, Ord 90-0069]

**68.205 Conditional Uses.** The following uses may be allowed in the Urban Commercial Zone by conditional use permit approved by the Planning Official:

- (1) Public or private school.
- (2) One dwelling.
- (3) Radio or communication tower and accessory facilities. [Ord 26, Ord 90-0069, Ord 2007-0222]

**68.305 Minimum Parcel or Lot Size.** The minimum parcel or lot size in the Urban Commercial Zone shall be determined by the type of facilities available. The minimum parcel or lot size shall be:

- (1) Two (2) acres when both an individual water supply system and sewage disposal system are used.
- (2) One (1) acre when either a community water supply system or a community sewage disposal system is used.
- (3) Ten thousand (10,000) square feet when both a community sewage disposal system and community water system are used.
- (4) Five (5) acres when the parcel or lot is located within the Corvallis Urban Growth Boundary. [Ord 26, Ord 90-0069, Ord 96-0118, Ord 2007-0222]

**68.405 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Urban Commercial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate compliance with siting standards provided in BCC 68.410 and other provisions of this code. [Ord 90-0069, Ord 2007- 0222]

**68.410 Siting Standards.** All structures allowed in the Urban Commercial Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) Either every site shall be adequately served by water, sewage disposal, and improved roads, or final approval of the site development plan shall be contingent on assurances for the provision of the necessary facilities.
- (2) The setback to a road right-of-way shall be at least twenty-five (25) feet. Such area shall be utilized exclusively for landscaping, fences, walls and driveways.
- (3) A side or rear setback shall be at least twenty-five (25) feet. The side or rear setback may be reduced to ten (10) feet if adjoining land is zoned for commercial or industrial use.
- (4) No setback is required for a structure of 120 square feet or less. A side or rear setback for an accessory structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (5) Architectural features shall not project more than two (2) feet into a required setback.
- (6) A structure which is not related to a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) A vision clearance area shall be maintained at the intersection of two rights-of-way, or a right-of-way and a driveway. The vision clearance area shall extend thirty (30) feet from the intersection of the right-of-way lines or a right-of-way line and a driveway. No structure, vegetation or embankment shall be permitted in a vision clearance area in excess of two (2) feet in height above the center of the road or driveway.
- (8) Off-street parking areas and setbacks adjacent to residential zoned areas shall be adequately landscaped and screened to create a visual buffer.
- (9) A structure shall not exceed forty (40) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (10) Off-street parking and loading shall be consistent with BCC 91.605 to 91.660.
- (11) Access shall be designed to cause minimum interference with traffic movements on abutting streets. Where necessary, additional rights-of-way shall be dedicated to maintain adequate traffic circulation. Setbacks shall be reviewed when requiring a dedication of additional right-of-way.
- (12) The arrangement of buildings, parking areas, signs, and other facilities shall be designed and oriented to minimize noise and glare effects on adjacent properties.
- (13) Artificial lighting, including illuminated signs and lights for parking areas, shall be arranged and constructed to avoid direct glare or unreasonable interference with the use and enjoyment of adjacent properties. [Ord 26, Ord 90-0069, Ord 92-0092, Ord 2007-0222]

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## Chapter 69

### Philomath General Commercial Zone (PC-2)

**69.000 Purpose.** The Philomath General Commercial District is intended to provide for commercial development within the Philomath Urban Growth Boundary prior to annexation through the provision of urban services in accordance with a municipal services agreement. [Ord 90-0069]

**69.005 Standards for Application.** The Philomath General Commercial Zone shall apply to unincorporated areas designated for General Commercial development in the Philomath Comprehensive Plan which are provided municipal water and sewer service and are subject to a delayed annexation agreement or a municipal services agreement. [Ord 90-0069]

**69.010 Permitted Use.** The following uses are allowed in the Philomath General Commercial Zone:

- (1) Retail sales and service establishments.
- (2) Professional offices.
- (3) Restaurant and drinking establishments.
- (4) Motel.
- (5) Funeral parlor.
- (6) Vehicle parking lot.
- (7) Public buildings and uses.
- (8) Church.
- (9) Residences provided in conjunction with a permitted use.
- (10) Residential home.
- (11) Day care for fewer than thirteen children.
- (12) Accessory use or structure. [Ord 90-0069]

**69.015 Conditional Uses.** The following uses may be allowed in the Philomath General Commercial Zone by conditional use permit approved by the Planning Official:

- (1) Drive-in restaurant.
- (2) Service station.
- (3) Carwash. [Ord 90-0069]

**69.020 Minimum Parcel or Lot Size.** There is no minimum parcel or lot size for property in the Philomath General Commercial Zone served by municipal water and sewer service and subject to a delay annexation agreement or municipal service agreement. Property not served by municipal water and sewer shall have a minimum parcel or lot size of two (2) acres. [Ord 90-0069, Ord 96-0118]

**69.025 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Philomath General Commercial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate compliance with siting standards provided in BCC 69.030 and other provisions of this code. [Ord 90-0069]

**69.030 Siting Standards.** All structures allowed in the Philomath General Commercial Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) There are no front, rear, or side setbacks, except a four (4) foot rear or side setback if abutting a residential zone.
- (2) Full lot coverage is permitted if setback and parking requirements are met.
- (3) A proposed building to be located within twenty (20) feet of a residential zone shall not exceed twenty-five (25) feet in height.
- (4) Exterior lighting shall not face directly, shine or reflect glare onto an adjacent street or property.
- (5) Sidewalks or bike paths shall be provided in accordance with appropriate standards, approved land development plans and access design.
- (6) All off-street parking areas and road approaches shall be paved with an asphaltic concrete or Portland cement concrete.
- (7) Outside storage or operational areas shall be screened from view by a coniferous hedge or sight obscuring fence. The fence shall be at least six (6) feet in height. A coniferous hedge shall attain a height of at least six (6) feet within four (4) years of planting. [Ord 90-0069]
- (8) Obstructions greater than two and one-half (2.5) feet in height shall not be located within twenty (20) feet of an intersection of two streets or a street and railroad, or within ten (10) feet of an intersecting street and alley. [Ord 90-0069]

## **Chapter 70**

### **Rural Commercial Zone (RC)**

**70.005 Purpose.** The Rural Commercial Zone shall establish standards for commercial activity outside of urban growth boundaries in Benton County. [Ord 26, Ord 90-0069, Ord 2007-0222]

**70.010 Application.** The Commercial Zone shall apply to areas designated Commercial on the adopted Comprehensive Plan Map located outside of urban growth boundaries. [Ord 26, Ord 90-0069, Ord 2007-0222]

**70.050 Use Overlay Zone.** A Use Overlay Zone designation (/U) is applied to areas that have special restrictions on permitted and conditional uses. Uses on these properties have been restricted to comply with the requirements for Exceptions to Statewide Planning Goals (OAR 660-004-0018). Permitted and conditional uses within a Use Overlay Zone are listed in Ordinance 2003-0184 and supersede those listed in this Chapter. All other provisions of this Chapter are applicable. Use Overlay designations have been applied to the following areas:

- (a) Lakepark Entertainment Center [Ord 2003-0185, Ord 2003-0184, Ord 2007-0222]

**70.105 Permitted Uses.** The following uses are allowed in the Rural Commercial Zone:

- (1) Farm use or forest use.
- (2) Sale of farm products produced in the surrounding rural area.
- (3) One dwelling required for the employer or employee for management or safeguarding of the commercial use.
- (4) Residential home.
- (5) One manufactured dwelling 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.
- (6) Accessory use or structure. [Ord 2007-0222]

#### **70.110 Permitted Uses – Limited Scale.**

- (1) The following uses are allowed in the Rural Commercial Zone, provided the use meets the standards of subsection (2) of this section:
  - (a) Professional office, clinics and personal service outlet.
  - (b) Restaurant, tavern, motel, hotel, and membership clubs.
  - (c) Service station.
  - (d) Sale of goods.
  - (e) Stand-alone vehicle parking lot (limited to 4,000 square feet).
  - (f) Day care for fewer than thirteen children.
  - (g) A use allowed pursuant to this section shall be limited to the following square footage of floor space within one or more buildings: 4,000 square feet within an unincorporated community as designated in the Comprehensive Plan; or
  - (h) 3,500 square feet outside unincorporated communities. [Ord 26, Ord 90-0069, Ord 2007-0222]

#### **70.120 Existing Uses.**



- (1) A lawfully established commercial use listed in BCC 70.110(1) existing as of August 9, 2007, which exceeds the applicable size limitation of BCC 70.110(2) shall be considered an outright permitted use and shall not be subject to the nonconforming use provisions of BCC 53.305 through 53.335. The total square footage, in one or more buildings, devoted to such use may be expanded without land use review to a maximum of the greater of subsections (a) and (b) of this section. A larger expansion may be permitted through a conditional use permit approved by the Planning Official pursuant to BCC 53.205 through 53.235 and 55.215. Any expansion beyond the size listed in subsection (a) of this section shall require the property owner to sign a declaratory statement to be recorded in the County Deed Records recognizing resource use of adjacent lands.
  - (a) 4,000 square feet inside an unincorporated community or 3,500 square feet elsewhere; or
  - (b) An additional 25% of the floor area occupied on August 9, 2007.
- (2) A lawfully established dwelling may be replaced, remodeled or expanded without review under BCC 53.305 through 53.335. Replacement shall be allowed if it occurs within one year of the destruction or abandonment of the dwelling.
- (3) All other lawfully established uses existing as of August 9, 2007, which do not comply with the provisions of the RC zone shall be considered nonconforming uses subject to the provisions of BCC 53.305 through 53.335.

[Ord 2007-0222]

**70.205 Conditional Uses.** The following uses may be allowed in the Rural Commercial Zone by conditional use permit approved by the Planning Official:

- (1) Public or private school.
- (2) One dwelling.
- (3) Radio or communication tower and accessory facilities, consistent with the size limits of BCC 70.110(2).
- (4) On land in the Rural Commercial zone located inside a designated unincorporated community, any use allowed outright, with limited scale, or conditionally, pursuant to BCC Chapter 74 (Rural Industrial zone) may be authorized as a conditional use, not including the commercial growing or processing of marijuana.

[Ord 26, Ord 90-0069, Ord 2007-0222, Ord 2015-0271]

**70.305 Minimum Parcel or Lot Size.** The minimum parcel or lot size in the Rural Commercial Zone shall be determined by the type of facilities available. The minimum parcel or lot size shall be:

- (1) Two (2) acres when both an individual water supply system and sewage disposal system are used.
- (2) One (1) acre when either a community water supply system or a community sewage disposal system is used.
- (3) Ten thousand (10,000) square feet when both a community sewage disposal system and community water system are used.
- (4) Five (5) acres when the parcel or lot is located within the Corvallis Urban Growth Boundary. [Ord 26, Ord 90-0069, Ord 96-0118, Ord 2007-0222]

**70.405 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Commercial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate compliance with siting standards provided in BCC 70.410 and other provisions of this code. [Ord 90-0069, Ord 2007- 0222]

**70.410 Siting Standards.** All structures allowed in the Rural Commercial Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) Either every site shall be adequately served by water, sewage disposal, and improved roads, or final approval of the site development plan shall be contingent on assurances for the provision of the necessary facilities.
- (2) The setback to a road right-of-way shall be at least twenty-five (25) feet. Such area shall be utilized exclusively for landscaping, fences, walls and driveways.
- (3) A side or rear setback shall be at least twenty-five (25) feet. The side or rear setback may be reduced to ten (10) feet if adjoining land is zoned for commercial or industrial use.
- (4) No setback is required for a structure of 120 square feet or less. A side or rear setback for an accessory structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (5) Architectural features shall not project more than two (2) feet into a required setback.
- (6) A structure which is not related to a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) A vision clearance area shall be maintained at the intersection of two rights-of-way, or a right-of-way and a driveway. The vision clearance area shall extend thirty (30) feet from the intersection of the right-of-way lines or a right-of-way line and a driveway. No structure, vegetation or embankment shall be permitted in a vision clearance area in excess of two (2) feet in height above the center of the road or driveway.
- (8) Off-street parking areas and setbacks adjacent to residential zoned areas shall be adequately landscaped and screened to create a visual buffer.
- (9) A structure shall not exceed forty (40) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (10) Off-street parking and loading shall be consistent with BCC 91.605 to 91.660.
- (11) Access shall be designed to cause minimum interference with traffic movements on abutting streets. Where necessary, additional rights-of-way shall be dedicated to maintain adequate traffic circulation. Setbacks shall be reviewed when requiring a dedication of additional right-of-way.
- (12) The arrangement of buildings, parking areas, signs, and other facilities shall be designed and oriented to minimize noise and glare effects on adjacent properties.
- (13) Artificial lighting, including illuminated signs and lights for parking areas, shall be arranged and constructed to avoid direct glare or unreasonable interference with the use and enjoyment of adjacent properties. [Ord 26, Ord 90-0069, Ord 92-0092, Ord 2007-0222]

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## Chapter 72

### Urban Industrial Zone (UI)

**72.005 Purpose.** The Urban Industrial Zone shall provide areas where manufacturing or other industrial activities can occur inside urban growth boundaries within Benton County. [Ord 26, Ord 90-0069, Ord 2007-0222]

**72.010 Application.** The Urban Industrial Zone shall apply to areas designated Industrial on the adopted Comprehensive Plan Map located inside urban growth boundaries. [Ord 26, Ord 90-0069, Ord 2007-0222]

**72.105 Permitted Uses.** The following uses are allowed in the Urban Industrial Zone:

- (1) Research facility, testing laboratory and facility for the manufacturing, processing and/or assembling of products, provided a permit is not required from the Oregon Department of Environmental Quality.
- (2) Vehicle and manufactured dwelling sales and/or repair.
- (3) Transportation terminals and warehouses.
- (4) Vocational school.
- (5) Aggregate processing, and concrete and asphalt batch plants.
- (6) Outside storage of materials, except junkyards as defined in BCC 51.020.
- (7) One dwelling required for the employer or employee for management or safeguarding of the industrial use.
- (8) Farm use and forest use.
- (9) Accessory use or structure.
- (10) Commercial growing, processing, or wholesaling of marijuana pursuant to a license issued by the State of Oregon. Processing that requires a permit from the Oregon Department of Environmental Quality shall be reviewed as a conditional use pursuant to BCC 72.205(1). [Ord 2015-0271]

[Ord 26, Ord 90-0069, Ord 2001-0172, Ord 2007-0222]

#### **72.205 Conditional Uses.**

- (1) A research facility, correctional and law enforcement facilities, junkyard, or testing laboratory or facility for the manufacturing, fabrication, processing or assembly of products which requires a permit from the Oregon Department of Environmental Quality may be allowed in the Industrial Zone by conditional use permit approved by the Planning Official. The decision to approve a conditional use permit shall be based on findings that the public health and safety will not be substantially affected by the proposed use when considering smoke, dust, odor, gas, fumes, glare, vibration, noise water pollution, radiation hazard or other noxious impacts.
- (2) Mining of aggregate or mineral resources may be allowed in the Industrial Zone by conditional use permit approved by the Planning Commission, pursuant to BCC 53.215 through 53.235. In addition to the conditional use criteria of BCC 53.215, approval requires the Planning Commission make the following findings:
  - (a) Mining will not significantly diminish the ability of the land to be used for other industrial uses in the future; and
  - (b) The mined land will be reclaimed to a topographic character and stability comparable to, or more

conducive to general, non-mining industrial uses than, the characteristics existing prior to mining.

- (3) Radio or communication tower and accessory facilities.

[Ord 26, Ord 90-0069, Ord 99-0146, Ord 2001-0172, Ord 2007-0222]

### **72.305 Minimum Parcel or Lot Size.**

- (1) The minimum parcel or lot size for any parcel or lot zoned "I-20" on the Official Zoning Map shall be twenty (20) acres.
- (2) Where no suffix number follows the "I" designation on the Official Zoning Map, the minimum parcel or lot size in the Industrial Zone shall be determined by the type of public facilities available. The minimum parcel or lot size shall be:
  - (a) Two (2) acres when both an individual water supply system and a sewage disposal system are used.
  - (b) One (1) acre when either a community water supply system or a community sewage disposal system is used.
  - (c) Fifteen thousand (15,000) square feet when both a community sewage disposal system and community water system are used. [Ord 26, Ord 90-0069, Ord 96-0118]

**72.405 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Urban Industrial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate compliance with siting standards provided in BCC 72.410 and other provisions of this code. [Ord 90-0069, Ord 2007- 0222]

**72.410 Siting Standards.** All structures located in the Urban Industrial Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) Either every site shall be adequately served by water, sewage disposal, sidewalks and improved roads, or final approval of the site development plan shall be contingent on assurances for the provision of the necessary facilities.
- (2) The setback to a road right-of-way shall be at least sixty (60) feet. Twenty-five (25) feet adjacent to the road right-of-way shall be utilized primarily for landscaping, fences, walls and driveways.
- (3) A side or rear setback shall be at least ten (10) feet, except when adjacent to a residential zone, in which case twenty-five (25) feet of landscaped buffer, including a visual screen of no less than five (5) feet in height, shall be provided.
- (4) No setback is required for a structure of 120 square feet or less. Except when adjacent to a residential zone, a side or rear setback for an accessory structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (5) Architectural features shall not project more than two (2) feet into a required setback.
- (6) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek and minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) Any structure within the Corvallis Urban Growth Boundary shall be at least twenty-five (25) feet from

the edge of riparian habitat, evidenced by existing non-aquatic vegetation which is generally dependent upon a seasonally high table, or at least forty (40) feet from the edge of the drainageway, whichever is greater.

- (8) A landscape plan shall be submitted for the first twenty-five (25) feet of all setbacks adjacent to a road in compliance with the following minimum standards:
  - (a) Seventy-five percent (75%) of the area shall contain live landscape materials (grass, trees, or shrubs);
  - (b) A vision clearance area shall be maintained at the intersection of two rights-of-way or a right-of-way and a driveway. The vision clearance area shall extend thirty (30) feet from the intersection of the right-of-way lines or a right-of-way line and a driveway. No structure, vegetation or embankment shall be permitted in a vision clearance area in excess of two (2) feet in height above the center of the road or driveway; and
  - (c) Off-street parking areas and setbacks adjacent to non-industrial zoned areas shall be adequately landscaped and screened.
- (9) A structure shall not exceed sixty (60) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (10) Off-street parking and loading comply with BCC 91.605 to 91.665. [Ord 2015-0271]
- (11) Access shall be designed to cause minimum interference with traffic movements on abutting streets. Where necessary, additional rights-of-way shall be dedicated to maintain adequate traffic circulation. Setbacks shall be reviewed when requiring a dedication of an additional right-of-way.
- (12) The arrangement of buildings, parking areas, signs and other facilities shall be designed and oriented to minimize noise and glare effects on adjacent properties.
- (13) Artificial lighting, including illuminated signs and lights for parking areas, shall be arranged and constructed to avoid direct glare or unreasonable interference with the use and enjoyment of adjacent properties. [Ord 26, Ord 90-0069, Ord 92-0092, Ord 2007-0222]

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## Chapter 73

### Philomath Light Industrial Zone (PLI)

**73.005 Purpose.** The Philomath Light Industrial Zone is intended to provide for light industrial development within the Philomath Urban Growth Boundary prior to annexation through the provisions of urban services in accordance with a municipal service agreement. [Ord 90-0069]

**73.010 Standards for Application.** The Philomath Light Industrial Zone shall apply to unincorporated areas designated for Light Industrial development in the Philomath Comprehensive Plan which are provided municipal water and sewer service subject to a delayed annexation agreement or municipal service agreement. [Ord 90-0069]

**73.020 Permitted Uses.** The following uses are allowed in the Philomath Light Industrial Zone:

- (1) The manufacture, assembly, processing, research or testing of materials or products, provided that a "Regular Discharge Permit" from the Oregon Department of Environmental Quality is not required.
- (2) Wholesaling, warehousing and storage of materials and products.
- (3) Commercial and service activities, including:
  - (a) Agricultural supply and equipment sales.
  - (b) Automobile sales and repair.
  - (c) Funeral parlor.
  - (d) Indoor recreation facilities.
  - (e) Machinery and equipment rental and sales.
  - (f) Professional offices.
  - (g) Restaurants, excluding drive-in restaurants.
- (4) Public utilities.
- (5) Transportation facilities including truck freight and distribution terminals.
- (6) Public facilities owned or operated by a governmental entity.
- (7) Accessory use or structure. [Ord 90-0069]

**73.025 Conditional Uses.** The following uses may be allowed in the Philomath Light Industrial Zone by conditional use permit approved by the Planning Official:

- (1) Auction house.
- (2) Church.
- (3) Communication transmission or receiver facility not in conjunction with another use.
- (4) Private heliport.
- (5) Single-family dwelling or manufactured dwelling in conjunction with a permitted or conditional use.
- (6) Horse riding and training facilities. [Ord 90-0069]

**73.030 Minimum Parcel or Lot Size.** There is no minimum parcel or lot size within the Philomath Light Industrial Zone. [Ord 90-0069, Ord-96-0118]

**73.035 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Philomath Light Industrial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail



showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate compliance with siting standards provided in BCC 73.040 and other provisions of this code. [Ord 90-0069]

**73.040 Siting Standards.** All structures located in the Philomath Light Industrial Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) A front, side or rear setback abutting a residential zone shall be at least thirty (30) feet. This setback may be reduced by two (2) feet for each foot of wall height facing the property line. Up to one-third of a required setback may be used for parking.
- (2) There is no setback for a side or rear setback abutting a commercial and industrial zone.
- (3) Full lot coverage is permitted if setback and parking requirements are met.
- (4) Maximum structure height shall be 45 feet, or three (3) stories, which ever is greater.
- (5) No obstruction, including walls, structures, fences or shrubs greater than two and one-half (2.5) feet in height shall extend within twenty (20) feet of a point of two intersecting streets or a street and railroad, or within ten (10) feet of a point of an intersecting street and alley.
- (6) Exterior lighting shall be located in such a manner to neither face directly, shine nor reflect glare onto an adjacent street or property.
- (7) All wiring for communication and power service up to 1,000 volts shall be located underground.
- (8) Sidewalks or bike paths shall be provided in accordance with appropriate standards, approved land development plans and access design.
- (9) All off-street parking areas and road approaches shall be paved with an asphaltic concrete or Portland cement concrete.
- (10) The site shall be landscaped according to the following minimum standards:
  - (a) One tree (a minimum of six (6) feet in height at the time of planting) per 900 square feet of required front setback area;
  - (b) One shrub per 200 square feet of required front setback area;
  - (c) Any parcel or lot abutting a residential zone shall screen outside storage or operation areas from view by the planting of a coniferous hedge or trees or the erection of a sight obscuring fence. The fence shall be at least six feet in height. Live plantings shall be selected to provide for a visual screen six (6) feet in height within five (5) years of planting;
  - (d) All selected landscaping species not tolerant to summer drought shall be served with an underground sprinkler system; and
  - (e) Dumpster stations shall be visually screened from public rights-of-way. [Ord 90-0069, Ord 96-0118]

## **Philomath Heavy Industrial Zone (PHI)**

**73.105 Purpose.** The Philomath Heavy Industrial Zone is intended to provide for heavy industrial development within the Philomath Urban Growth Boundary prior to annexation through the provision of urban services in accordance with a municipal service agreement. Heavy industrial zoned areas are designed to accommodate uses which are generally incompatible with non-industrial urban uses. Designated areas should have good rail and/or highway access. [Ord 90-0069]

**73.110 Standards for Application.** The Philomath Heavy Industrial Zone shall apply to unincorporated areas designated for Heavy Industrial development in the Philomath Comprehensive Plan which are provided municipal water and sewer service subject to a delayed annexation agreement or municipal service agreement. [Ord 90-0069]

**73.120 Permitted Uses.** The following uses are allowed in the Philomath Heavy Industrial Zone:

- (1) The manufacture, assembly, processing, research or testing of materials or products not requiring a conditional use permit, provided that all applicable State and federal health and pollution standards are met.
- (2) All uses permitted in the Philomath Light Industrial Zone as identified in BCC 73.520. [Ord 90- 0069]

**73.125 Conditional Uses.** The following uses may be allowed in the Philomath Heavy Industrial Zone by conditional use permit approved by the Planning Official:

- (1) Airport.
- (2) Automobile wrecking yard, junk yard.
- (3) Cement, lime or similar products manufacture.
- (4) Chemical manufacture.
- (5) Explosives storage or manufacture.
- (6) Extraction and processing of rock, sand, gravel, or other earth products.
- (7) Incineration plant.
- (8) Petroleum products manufacture or refining.
- (9) Pulp mill.
- (10) Rendering plant, tannery, slaughter house, feed lot.
- (11) Smelting or refining of metallic ore or minerals.
- (12) Solid waste disposal transfer station.
- (13) Single-family dwelling or manufactured dwelling in conjunction with a permitted or conditional use.
- (14) Accessory use or structure. [Ord 90-0069]

**73.130 Minimum Parcel or Lot Size.** There is no minimum parcel or lot size within the Philomath Heavy Industrial Zone. [Ord 90-0069, Ord 96-0118]

**73.135 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Philomath Heavy Industrial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate

compliance with siting standards provided in BCC 73.140 and other provisions of this code. [Ord 90-0069]

**73.140 Siting Standards.** All structures located in the Philomath Heavy Industrial Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) A front, side or rear setback abutting a residential zone shall be at least fifty (50) feet. This setback may be reduced by three (3) feet for each foot of wall height facing the property line. Up to one-third of a required setback may be used for parking.
- (2) There is no setback to a side or rear parcel, lot, or property line abutting a commercial and industrial zone.
- (3) Full lot coverage is permitted provided setback and parking requirements are met.
- (4) Maximum structure height shall be sixty (60) feet, or three (3) stories, whichever is greater.
- (5) Exterior lighting shall be located in such a manner to neither face directly, shine nor reflect glare onto an adjacent street or property.
- (6) All wiring for communication and power service up to 1,000 volts shall be located underground.
- (7) Sidewalks or bike paths shall be provided in accordance with appropriate standards, approved land development plans and access design.
- (8) All off-street parking areas and road approaches shall be paved with an asphaltic concrete or Portland cement concrete.
- (9) The site shall be landscaped according to the following minimum standards:
  - (a) One tree (a minimum of six (6) feet in height at the time of planting) per 900 square feet of required front setback area;
  - (b) One shrub per 200 square feet of required front setback area;
  - (c) Any parcel or lot abutting a residential zone shall screen outside storage or operation areas from view by the planting of a coniferous hedge or trees or the erection of a sight obscuring hedge. The fence shall be at least six (6) feet in height. Live plantings shall be selected to provide for a visual screen six (6) feet in height within five (5) years of planting;
  - (d) All selected landscaping species not tolerant to summer droughts shall be served with an underground sprinkler system; and
  - (e) Dumpster stations shall be visually screened from public rights-of-way. [Ord 90-0069, Ord 96-0118]

## Chapter 74

### Rural Industrial Zone (RI)

**74.005 Purpose.** The Rural Industrial Zone shall provide areas where manufacturing or other industrial activities can occur outside of urban growth boundaries within Benton County. [Ord 26, Ord 90-0069, Ord 2007-0222]

**74.010 Application.** The Rural Industrial Zone shall apply to areas designated Industrial on the adopted Comprehensive Plan Map and located outside of urban growth boundaries. [Ord 26, Ord 90-0069, Ord 2007-0222]

**74.050 Use Overlay Zone.** A Use Overlay Zone designation (/U) is applied to areas that have special restrictions on permitted and conditional uses. Uses on these properties have been restricted to comply with the requirements for Exceptions to Statewide Planning Goals (OAR 660-004-0018) or other specified rules and statutes. Permitted and conditional uses within a Use Overlay Zone are listed in the ordinance(s) listed below, and supersede those listed in this Chapter. All other provisions of this Chapter are applicable. Use Overlay designations have been applied to the following areas:

- (a) Hyslop Road Industrial Site – Ordinance 2006-0213. [Ord 2006-0213]

**74.070 Abandoned or Diminished Mill Site.** Pursuant to ORS 197.719, Benton County may approve a zone change for an “abandoned or diminished mill site” to allow any level of industrial use, notwithstanding Goals 3, 4, and 14.

**74.105 Permitted Uses.** The following uses are allowed in the Rural Industrial Zone:

- (1) Farm use and forest use.
- (2) Primary processing of farm or forest products produced in the surrounding rural area.
- (3) Outside storage of materials related to resource use in the surrounding rural area. Junkyards shall not be allowed.
- (4) One dwelling required for the employer or employee for management or safeguarding of the industrial use.
- (5) Aggregate processing, and concrete and asphalt batch plants, provided the material processed is mined in the local area. Note that mining in the RI zone is a conditional use.
- (6) Commercial growing, processing, or wholesaling of marijuana pursuant to a license issued by the State of Oregon. Processing that requires a permit from the Oregon Department of Environmental Quality shall be reviewed as a conditional use pursuant to BCC 74.205(1).

[Ord 2007-0222; Ord 2015-0271]

#### **74.110 Permitted Uses – Limited Scale.**

- (1) The following uses are allowed in the Rural Industrial Zone, provided the use meets the standards of subsection (2) of this section:
  - (a) Research facility, testing laboratory and facility for the manufacturing, processing and/or assembling of products, provided a permit is not required from the Oregon Department of Environmental Quality.
  - (b) Vehicle and manufactured dwelling sales and/or repair.
  - (c) Transportation terminals and warehouses.

- (d) Vocational school.
- (e) Aggregate processing, and concrete and asphalt batch plants not authorized under BCC 74.105(5).
- (f) Accessory use or structure.
- (g) Outside storage of materials. Junkyards, as defined in BCC 51.020, shall not be allowed.
- (h) Commercial processing not permitted by 74.105(2), and wholesaling of marijuana pursuant to a license issued by the State of Oregon.

[Ord 26, Ord 90-0069, Ord 2001-0172, Ord 2015-0271]

- (2) Uses allowed pursuant to this section shall be limited to the following square footage of floor space within one or more buildings (including outside storage of materials):
  - (a) 40,000 square feet within an unincorporated community as designated in the Comprehensive Plan; or
  - (b) 35,000 square feet outside unincorporated communities.
- (3) A larger use may be permitted through a conditional use permit approved by the Planning Official pursuant to BCC 53.205 through 53.235 and 55.215. Additional findings shall demonstrate that the site can safely accommodate the on-site sewage disposal needs and provide adequate water supply for the proposed use.

[Ord 2007-0222]

#### **74.120 Existing Uses.**

- (1) A lawfully established industrial use listed in BCC 74.110(1) existing as of August 9, 2007, which exceeds the applicable size limitation of BCC 74.110(2) shall be considered an outright permitted use and shall not be subject to the nonconforming use provisions of BCC 53.305 through 53.335. The total square footage, in one or more buildings, devoted to such an existing lawfully established industrial use may be expanded without land use review to a maximum of the greater of subsections (a) and (b). A larger expansion may be permitted through a conditional use permit approved by the Planning Official pursuant to BCC 53.205 through 53.235 and 55.215 with additional findings demonstrating that the site can safely accommodate the on-site sewage disposal needs and provide adequate water supply for the proposed use. Any expansion beyond the size listed in subsection (a) of this section shall require the property owner to sign a declaratory statement to be recorded in the County Deed Records recognizing resource use of adjacent lands.
  - (a) 40,000 square feet inside an unincorporated community or 35,000 square feet elsewhere; or
  - (b) An additional 25% of the floor area occupied on August 9, 2007.
- (2) A lawfully established dwelling may be replaced, remodeled or expanded without review under BCC 53.305 through 53.335. Replacement shall be allowed if it occurs within one year of the destruction or abandonment of the dwelling.
- (3) All other lawfully established uses existing as of August 9, 2007, which do not comply with the provisions of the RI zone shall be considered nonconforming uses subject to the provisions of BCC 53.305 through 53.335.

[Ord 2007-0222]

**74.205 Conditional Uses.** The following uses are allowed pursuant to BCC 53.205 through 53.235, and are subject to the size limitations of BCC 74.110(2) and (3).

- (1) A research facility, correctional and law enforcement facilities, junkyard, or testing laboratory or facility for the manufacturing, fabrication, processing or assembly of products which requires a permit from the Oregon Department of Environmental Quality may be allowed in the Rural Industrial Zone

by conditional use permit approved by the Planning Official. The decision to approve a conditional use permit shall be based on findings that the public health and safety will not be substantially affected by the proposed use when considering smoke, dust, odor, gas, fumes, glare, vibration, noise water pollution, radiation hazard or other noxious impacts.

- (2) Mining of aggregate or mineral resources may be allowed in the Rural Industrial Zone by conditional use permit approved by the Planning Commission, pursuant to BCC 53.215 through 53.235. In addition to the conditional use criteria of BCC 53.215, approval requires the Planning Commission make the following findings:
  - (a) Mining will not significantly diminish the ability of the land to be used for other industrial uses in the future; and
  - (b) The mined land will be reclaimed to a topographic character and stability comparable to, or more conducive to general, non-mining industrial uses than, the characteristics existing prior to mining.
- (3) Radio or communication tower and accessory facilities.
- (4) On land in the Rural Industrial Zone located inside a designated unincorporated community, any use allowed outright, with limited scale, or conditionally, pursuant to BCC Chapter 70 (Rural Commercial Zone) may be authorized as a conditional use.

[Ord 26, Ord 90-0069, Ord 99-0146, Ord 2001-0172, Ord 2007-0222]

#### **74.305 Minimum Parcel or Lot Size.**

- (1) The minimum parcel or lot size for any parcel or lot zoned "I-20" on the Official Zoning Map shall be twenty (20) acres.
- (2) Where no suffix number follows the "I" designation on the Official Zoning Map, the minimum parcel or lot size in the Industrial Zone shall be determined by the type of public facilities available. The minimum parcel or lot size shall be:
  - (a) Two (2) acres when both an individual water supply system and a sewage disposal system are used.
  - (b) One (1) acre when either a community water supply system or a community sewage disposal system is used.
  - (c) Fifteen thousand (15,000) square feet when both a community sewage disposal system and community water system are used. [Ord 26, Ord 90-0069, Ord 96-0118]

**74.405 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Rural Industrial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate compliance with siting standards provided in BCC 74.410 and other provisions of this code. [Ord 90-0069, Ord 2007- 0222]

**74.410 Siting Standards.** All structures located in the Rural Industrial Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) Either every site shall be adequately served by water, sewage disposal, sidewalks and improved roads, or final approval of the site development plan shall be contingent on assurances for the provision of the necessary facilities.
- (2) The setback to a road right-of-way shall be at least sixty (60) feet. Twenty-five (25) feet adjacent to the road right-of-way shall be utilized primarily for landscaping, fences, walls and driveways.
- (3) A side or rear setback shall be at least ten (10) feet, except when adjacent to a residential zone, in which case twenty-five (25) feet of landscaped buffer, including a visual screen of no less than five (5) feet in

height, shall be provided.

- (4) No setback is required for a structure of 120 square feet or less. Except when adjacent to a residential zone, a side or rear setback for an accessory structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (5) Architectural features shall not project more than two (2) feet into a required setback.
- (6) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek and minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (7) Any structure within the Corvallis Urban Growth Boundary shall be at least twenty-five (25) feet from the edge of riparian habitat, evidenced by existing non-aquatic vegetation which is generally dependent upon a seasonally high table, or at least forty (40) feet from the edge of the drainageway, whichever is greater.
- (8) A landscape plan shall be submitted for the first twenty-five (25) feet of all setbacks adjacent to a road in compliance with the following minimum standards:
  - (a) Seventy-five percent (75%) of the area shall contain live landscape materials (grass, trees, or shrubs);
  - (b) A vision clearance area shall be maintained at the intersection of two rights-of-way or a right-of-way and a driveway. The vision clearance area shall extend thirty (30) feet from the intersection of the right-of-way lines or a right-of-way line and a driveway. No structure, vegetation or embankment shall be permitted in a vision clearance area in excess of two (2) feet in height above the center of the road or driveway; and
  - (c) Off-street parking areas and setbacks adjacent to non-industrial zoned areas shall be adequately landscaped and screened.
- (9) A structure shall not exceed sixty (60) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (10) Off-street parking and loading comply with BCC 91.605 to 91.660.
- (11) Access shall be designed to cause minimum interference with traffic movements on abutting streets. Where necessary, additional rights-of-way shall be dedicated to maintain adequate traffic circulation. Setbacks shall be reviewed when requiring a dedication of an additional right-of-way.
- (12) The arrangement of buildings, parking areas, signs and other facilities shall be designed and oriented to minimize noise and glare effects on adjacent properties.
- (13) Artificial lighting, including illuminated signs and lights for parking areas, shall be arranged and constructed to avoid direct glare or unreasonable interference with the use and enjoyment of adjacent properties. [Ord 26, Ord 90-0069, Ord 92-0092, Ord 2007-0222]



## Chapter 75

### Village Commercial Zone (VC)

**75.005 Purpose.** The Village Commercial Zone shall provide areas within Benton County where commercial activities that support the local and traveling public can occur within recognized and planned Rural Unincorporated Communities (RUC). This zone shall recognize the rural village character of RUCs, the existing patterns of development, and the need for greater flexibility to allow these communities to maintain their viability. [Ord 2008-0226; Ord 2015-0271]

**75.010 Application.** The Village Commercial Zone shall apply to areas designated Commercial on the adopted Comprehensive Plan Map where they occur within the official boundaries of planned Rural Unincorporated Communities

**75.020 Notification of Fire District.** In consideration of the small lot size, proximity of forested area, and density of structures in the Village Commercial Zone, the Community Development Department shall notify the applicable fire district at the time of application for a building permit, establishment of a permitted use, or application for a conditional use permit.

**75.105 Permitted Uses.** The following uses are allowed in the Village Commercial Zone:

- (1) Vehicle parking lot to support permitted use.
- (2) One dwelling per parcel. A dwelling will be allowed for the employer or employee of a commercial use, either as a separate structure or occupying a portion of a commercial structure.
- (3) Residential home (care facility).
- (4) Hotels, motels, bed and breakfasts, inns, and cabin camps, limited to 35 rooms or less.
- (5) Farm use or forest use.
- (6) Accessory use or structure.
- (7) Dwelling units located above the first story of an active commercial use.
- (8) Church, grange hall, community hall, nonprofit meeting hall, or other similar non-profit community facility.

#### **75.110 Permitted Uses – Limited Scale.**

- (1) The following uses are allowed in the Village Commercial Zone, provided the use does not exceed 4,000 square feet of floor space within one or more buildings:
  - (a) Personal, medical, and business services such as beauticians, clinics, cleaners, accountants, and printers.
  - (b) Eating and drinking establishments.
  - (c) Sales and service establishments for vehicles, including autos, boats, and farm machinery.
  - (d) General and specialty retail trade establishments, except for the retail of marijuana.
  - (e) Day care for fewer than thirteen children.
  - (f) Art and craft galleries and studios.
  - (g) Establishment for performance of film, theatrical, music or dance productions, limited to 300 seats.



### **75.120 Existing Uses.**

- (1) A lawfully established commercial use existing as of July 10, 2008 in the Village Commercial Zone shall be considered an outright permitted use and shall not be classified as a nonconforming use. The total square footage, in one or more buildings, devoted to such an existing lawfully established commercial use may be expanded to a maximum of 4,000 square feet or an additional 25% of the floor area occupied on July 10, 2008, whichever is greater. The nonconforming use provisions of BCC 53.305 through 53.335 shall not apply.
- (2) A lawfully established dwelling may be replaced, remodeled or expanded without review under BCC 53.305 through 53.335. Replacement shall be allowed if it occurs within one year of the destruction or abandonment of the dwelling.
- (3) All other lawfully established uses existing as of July 24, 2008 in the Village Commercial Zone shall be considered nonconforming uses subject to the provisions of BCC 53.305 through 53.335.

**75.205 Conditional Uses.** The following uses may be allowed in the Village Commercial Zone by conditional use permit approved by the Planning Official:

- (1) Public or private school.
- (2) Hospital, sanitarium, rest home, and nursing home.
- (3) Light industry, not including the commercial growing, processing, or wholesaling of marijuana.  
(Definition: LIGHT INDUSTRY: A business having noise, dust, odor, light, traffic, and hazard impacts that are similar to those experienced in general business areas. Outdoor storage is screened with sight-obscuring fences.)
- (4) Multi-Family Dwelling.
- (5) Tower for utility, communications, wind energy, or structures having similar impacts.
- (6) Recreational facility such as campground, stable, or skating rink.
- (7) Mixed-use development providing a combination of residential and commercial uses, in which each commercial use meets the size limitations of BCC 75.110.
- (8) Any use listed in section 66.105, Village Residential Zone permitted uses.

**75.305 Minimum Parcel or Lot Size.** The minimum parcel or lot size in the Village Commercial Zone shall be determined by the type of facilities available. The minimum parcel or lot size shall be 5000 square feet if water and sewer services will be provided by the local service district.

**75.405 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Village Commercial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, vehicular and pedestrian access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, signage, building façade, and exterior lighting.

**75.410 Siting Standards.** All structures allowed in the Village Commercial Zone shall be sited in compliance with the following standards:

- (1) Every site shall be adequately served by water, sewage disposal, and improved roads, or final approval of the site development plan shall be contingent on assurances for the provision of the necessary facilities.
- (2) Setbacks to roads and/or property lines, when they exist, shall be utilized for landscaping and/or pedestrian improvements, subject to Planning Official approval.
- (3) Zero lot line development is allowed subject to Planning Official approval, and must conform to Fire Code in effect at the time of development.

- (4) A vision clearance area shall be maintained at the intersection of two rights-of-way, or a right-of-way and a driveway. The vision clearance area shall extend thirty (30) feet from the intersection of the right-of-way lines or a right-of-way line and a driveway. No structure, vegetation or embankment shall be permitted in a vision clearance area in excess of two (2) feet in height above the center of the road or driveway, subject to staff approval.
- (5) On-street parking and off-street parking for each commercial use shall be adequate to serve the permitted use, and may be located on adjacent parcels.
- (6) Off-street parking areas and setbacks adjacent to residential zoned areas shall be adequately landscaped and screened to create a visual buffer.
- (7) Auto access shall be designed to cause minimum interference with traffic movements on abutting streets. Where necessary, additional rights-of-way shall be dedicated to maintain adequate traffic circulation. Setbacks shall be reviewed when requiring a dedication of additional right-of-way.
- (8) The arrangement of buildings, lighting, parking areas, signs, and other facilities shall be designed and oriented to minimize noise and glare effects on adjacent residential properties.
- (9) Pedestrian access shall be considered in the design of site features to provide a clear, unobstructed path in which pedestrians are not required to share their space with autos.
- (10) A structure shall not exceed forty (40) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (11) On any parcel adjacent to a resource zone, any use or structure not directly related to resource use shall be located as far from the resource zone as practicable considering other required setbacks, topography, drainage, resource-zone setbacks on neighboring properties, and other factors, as determined by the Planning Official. Prior to approval of such use or structure, the owner shall sign a declaratory statement to be recorded in the County Deed Records recognizing resource use of adjacent lands.

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## Chapter 76

### Agricultural Industrial Zone (AI)

**76.005 Purpose.** The Agricultural Industrial Zone shall provide areas where rural industry directly related to the area's agricultural and forestry resources can occur within Benton County. [Ord 26, Ord 90-0069, Ord 90-0077]

**76.010 Application.** The Agriculture Industrial Zone is applied to areas forestry and agricultural related industrial uses compatible with agriculture uses. Application of the Agricultural Industrial Zone to land designated for resource use by the County Comprehensive Plan shall require a Comprehensive Plan Amendment and an exception to applicable Statewide Planning Goals. [Ord 26, Ord 90-0069, Ord 90-0077]

**76.015 Transitional Areas - Philomath.** Certain areas near the Philomath Urban Growth Boundary are zoned Agricultural Industrial/Transitional (AI/T) as shown on the Official Zoning Map, indicating that these areas may be added to the Philomath Urban Growth Boundary in the future. [Ord 26, Ord 90-0069]

**76.020 Use Overlay Zone.** A Use Overlay Zone designation (/U) is applied to areas that have special restrictions on permitted and conditional uses. Uses on these properties have been restricted to comply with the requirements for Exceptions to Statewide Planning Goals (OAR 660-004-0018) or other specified rules and statutes. Permitted and conditional uses within a Use Overlay Zone are listed in the ordinance(s) listed below, and supersede those listed in this Chapter. All other provisions of this Chapter are applicable. Use Overlay designations have been applied to the following areas:

- (a) Harris Road Agricultural Industrial Site – Ordinance 2015-0265.

**76.105 Permitted Uses.** The following uses are allowed in the Agricultural Industrial Zone:

- (1) Agriculture related warehousing, packing, processing, or cold storage.
- (2) Sales, service, and storage of agriculture related vehicles and accessories and products required for farm use.
- (3) Winery.
- (4) One dwelling required for the employer or employee for management or safeguarding of the industrial use.
- (5) Farm use.
- (6) Forest use.
- (7) Accessory use or structure.
- (8) Commercial growing, processing, or wholesaling of marijuana pursuant to a license issued by the State of Oregon.

[Ord 26, Ord 90-0069, Ord 2015-0271]

**76.205 Conditional Uses.** The following industrial uses may be allowed in the Agricultural Industrial Zone by conditional use permit approved by the Planning Official. [Ord 90-077]

- (1) Other agricultural related industrial uses which are not permitted pursuant to BCC 76.105.
- (2) The primary processing of forestry products including but not limited to the production of wood chips, veneer, or dimensional lumber. [Ord 90-0077]
- (3) The warehousing of forest products including but not limited to the storage of saw logs, dimensional lumber, other primary wood products or wood by-products. [Ord 26, Ord 90-0069, Ord 90-0077]

**76.305 Minimum Parcel or Lot Size.** The minimum parcel or lot size in the Agricultural Industrial Zone

shall be one (1) acre. [Ord 26, Ord 90-0069, Ord 96-0118]

**76.405 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Agriculture Industrial Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate compliance with siting standards provided in BCC 76.410 and other provisions of this code. [Ord 90-0069]

**76.410 Siting Standards.** All structures located in the Agriculture Industrial Zone shall be sited in compliance with BCC Chapter 99 and the following standards:

- (1) Either every site shall be adequately served by water, sewage disposal, improved roads, or final approval of the site development plan shall be contingent on assurances for the provision of the necessary facilities.
- (2) A setback to a road right-of-way shall be at least sixty (60) feet, of which twenty-five (25) feet adjacent to the road right-of-way shall be utilized exclusively for landscaping, fences, walls, and ingress/egress driveways.
- (3) A side or rear setback shall be at least thirty (30) feet, except the setback may be reduced to ten (10) feet if the abutting land is zoned for industrial use.
- (4) Architectural features shall not project more than two (2) feet into a required setback.
- (5) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (6) No setback is required for a structure of 120 square feet or less. Except when adjacent to a residential zone, a required side or rear setback for an accessory structure may be reduced to three (3) feet if the accessory structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (7) A vision clearance area shall be maintained at the intersection of two rights-of-way or a right-of-way and a driveway. The vision clearance area shall extend thirty (30) feet from the intersection of the right-of-way lines or a right-of-way line and a driveway. No structure, vegetation or embankment shall be permitted in a vision clearance area in excess of two feet in height above the center of the road or driveway.
- (8) Off-site parking and loading shall comply with BCC 91.604 to 91.660.
- (9) Access shall be designated to cause minimum interference with traffic movements on abutting streets. Where necessary, additional rights-of-way shall be dedicated to maintain adequate traffic circulation.
- (10) The arrangement of buildings, parking areas, signs and other facilities shall be designated and oriented to minimize noise and glare relative to adjacent properties.
- (11) Artificial lighting, including illuminated signs and lights for parking areas shall be arranged and constructed to avoid direct glare or unreasonably interference with the use or enjoyment of adjacent properties. [Ord 26, Ord 90-0069, Ord 92-0092]

# Chapter 77

## Landfill Site (LS)

**77.005 Purpose.** The Landfill Site Zone shall establish a specific landfill area in Benton County. [Ord 26I, Ord 90-0069]

**77.010 Application.** The Landfill Site Zone recognizes the existing site in the Coffin Butte area, and allows for its continued use pursuant to Oregon Department of Environmental Quality (DEQ) permits, Benton County Code Chapter 23, and an approved Site Development Plan. [Ord 26I, Ord 90-0069]

**77.105 Permitted Uses.** The following uses are allowed in the Landfill Site Zone:

- (1) Municipal solid waste disposal, in accordance with a Solid Waste Disposal Franchise and an approved Site Development Plan.
- (2) Recycling facilities.
- (3) Forestry and agricultural use as a conversion factor leading to reclamation of the site in the future.
- (4) Aggregate and mineral resource use in accordance with Oregon Department of Geology and Mineral Industry Permits.
- (5) Structures normally associated with the operation of a landfill.
- (6) Operation of equipment in conjunction with landfill operations.
- (7) Installation and operation of monitoring devices as required by DEQ such as leachate sample equipment, leachate treatment facilities, and vector control systems.
- (8) Landfill gas monitoring and recovery systems. [Ord 26I, Ord 90-0069]

**77.205 Prohibited Uses.** The following uses are prohibited in the Landfill Site Zone:

- (1) Hazardous waste disposal.
- (2) Disposal of materials prohibited by the Solid Waste Disposal Franchise. [Ord 26I, Ord 90-0069]

**77.305 Conditional Uses Approved by the Planning Commission.** Any proposal to expand the area approved for a landfill within the Landfill Site Zone is allowed by conditional use permit approved by the Planning Commission. The Benton County Environmental Health Division and the Solid Waste Advisory Council shall review and make recommendations through the Planning Official to the Planning Commission regarding the Site Development Plan Map and narrative. The Oregon Department of Environmental Quality shall be given an opportunity to review and comment on any proposal which may affect this site. [Ord 26I, Ord 90-0069]

**77.310 Conditional Use Review.**

- (1) The applicant for a conditional use permit shall provide a narrative which describes:
  - (a) Adjacent land use and impacts upon adjacent uses;
  - (b) Future use of site as reclaimed, and impacts of that reclamation on adjacent uses;
  - (c) Provisions for screening of the site from public roads and adjacent property;
  - (d) Egress and ingress; and
  - (e) Other information as required by the Planning Official.
- (2) A site plan map shall accompany a conditional use permit application. The map shall contain at least a scale, north arrow, assessor map numbers, location of existing landfill, access, proposed alteration, leachate treatment or monitoring areas surface water systems, and existing and proposed screening

(location and types of materials). A statement shall be placed on the map that the site plan map and narrative together are considered as the Site Development Plan. A signature block shall be included for the date the approval is given and the signature of the Planning Official indicating approval.

- (3) A conditional use permit application shall contain a reclamation plan describing present efforts and future reclamation plans related to the site.
- (4) The following environmental and operational considerations shall be reviewed prior to changes in the documents referenced above:
  - (a) Geology;
  - (b) Groundwater and surface water;
  - (c) Soil depth and classification, and erosion control factors;
  - (d) Slope; and
  - (e) Cover material availability, transportation, and use. [Ord 26I, Ord 90-0069]

**77.405 Review of DEQ Permits.** Copies of materials submitted to the Oregon Department of Environmental Quality as a part of any permit process shall be submitted to the Planning Official. If at any time the Planning Official determines that permit application materials or conditions of DEQ permit are judged to merit public review, a Public Hearing before the Planning Commission shall be scheduled. [Ord 26I, Ord 90-0069]

## Chapter 78

### Public Zone (P)

**78.005 Purpose.** The Public Zone shall assure that uses of public lands are compatible with adjacent uses. [Ord 26, Ord 90-0069]

**78.010 Application.** The Public Zone may be applied to properties owned by federal, State, or local government agencies. [Ord 26, Ord 90-0069]

**78.050 Use Overlay Zone.** A Use Overlay Zone designation (/U) is applied to areas that have special restrictions on permitted and conditional uses. Uses on these properties have been restricted to comply with the requirements for Exceptions to Statewide Planning Goals (OAR 660-04-018). Permitted and conditional uses within a Use Overlay Zone are listed in the ordinance implementing the zone and supersede those listed in this Chapter. All other provisions of this Chapter are applicable. Use Overlay designations have been applied to the following areas:

- (a) Peavy Arboretum. [Ord 92-0093]
- (b) Oak Grove School. [Ord 2017-0283]

**78.105 Permitted Uses.** The following uses are allowed in the Public Zone:

- (1) Farm use.
- (2) Forest use.
- (3) Public school, including a college or university and associated research facilities.
- (4) Public park, natural area, open space or acquisition of greenway corridor.
- (5) Fairgrounds.
- (6) Water supply, water treatment facility, wastewater treatment facility, reservoir and other related facilities.
- (7) Biological research facility.
- (8) Airport and related facilities.
- (9) Accessory use or structure.
- (10) Caretaker dwellings in conjunction with a permitted use. [Ord 26, Ord 90-0069, Ord 2005-0209, Ord 2005-0210]

**78.205 Conditional Uses.** Any use, not including the commercial growing, processing, wholesaling or retailing of marijuana, which is not permitted within the Public Zone is allowed by conditional use permit approved by the Planning Official. [Ord 26, Ord 90-0069, Ord 2015-0271]

#### **78.305 Minimum Parcel or Lot Size.**

- (1) The minimum parcel or lot size for any parcel or lot designated "P-50" on the Official Zoning Map shall be fifty (50) acres.
- (2) The minimum parcel or lot size for all other land in the Public Zone within the Corvallis Urban Growth Boundary shall be five (5) acres. [Ord 90-0069, Ord 96-0118]

**78.405 Siting Standards.** All structures allowed in the Public Zone shall be sited in compliance with the applicable provisions of BCC Chapters 83, BCC Chapter 88 (when located within the Corvallis Urban Fringe), BCC Chapter 99, and the following additional standards in instances when they are more restrictive than the provisions of BCC Chapters 83, 88, and 99, as applicable:



- (1) A primary structure shall be placed at least thirty (30) feet from a property line and at least forty-five (45) feet from the edge of an existing roadway, whichever is greater. Architectural features shall not project more than two (2) feet into a required setback.
- (2) An accessory structure shall not be placed closer than twenty (20) feet from any property line. No setback is required for an accessory structure of 120 square feet or less. A side or rear setback for an accessory structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (3) A structure shall not exceed forty (40) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (4) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line. [Ord 26, Ord 90-0069, Ord 92-0092, Ord 2005-0209, Ord 2005-0210]

## Chapter 79

### Rural Service Center Zone (RSC)

**79.005 Purpose.** The Rural Service Center Zone shall provide standards and procedures for areas containing concentrations of local commercial services to meet the needs of rural residents, as well as limited tourist commercial services consistent with the maintenance of the rural character of the area. [Ord 90-0069]

**79.010 Application.** The Rural Service Center Zone may be applied to unincorporated areas designated by the Benton County Comprehensive Plan as rural service centers. [Ord 90-0069]

#### **79.105 Permitted Uses.**

- (1) The following uses are allowed in the Rural Service Center Zone:
  - (a) Farm use, excluding hog and mink farms, subject to BCC 79.210.
  - (b) One dwelling per lot(s) or parcel(s) containing at least 5,000 square feet.
  - (c) Residential home.
  - (d) Home occupation.
  - (e) Park, cemetery, or playground, or community building.
  - (f) Church, school, grange hall, community hall, or other similar non-profit community facility.
  - (g) Day care for fewer than thirteen children.
  - (h) Accessory use or structure.
- (2) The following uses are allowed in the Rural Service Center Zone, subject to a site development plan:
  - (a) Retail stores, office or service establishments.
  - (b) Agriculturally oriented commercial use.
  - (c) Day care center.
  - (d) Television or radio station.
  - (e) Restaurant or tavern. [Ord 90-0069, Ord 97-0131]

**79.205 Conditional Uses.** The following uses may be allowed in the Rural Service Center Zone by conditional use permit approved by the Planning Official:

- (1) One dwelling per lot(s) or parcel(s) containing less than 5,000 square feet.
- (2) Multi-family dwelling on lot(s) or parcel(s) containing at least 2,500 square feet per dwelling unit.
- (3) Residential facility.
- (4) Solid waste disposal site, including pickup and transfer centers licensed pursuant to BCC Chapter 23.
- (5) Facility for water supply water treatment, or wastewater treatment, and associated transmission facilities.
- (6) One manufactured dwelling as the only dwelling on a parcel or lot.
- (7) Transmission, reception or relay tower for broadcast signals.
- (8) Tourist or travelers accommodations.
- (9) Mobile home or manufactured dwelling park.
- (10) Recreational vehicle park or campground.

- (11) Kennel or animal hospital.
- (12) Automobile repair garage or service station.
- (13) Commercial amusement or recreation establishment. (14) Fire stations [Ord 90-0069, Ord 96-0118, Ord 99-0146]

**79.210 Limitations on Uses.** The following limitations shall apply to uses allowed by BCC 79.105(1) of this chapter. Animal husbandry and other similar agricultural practices permitted pursuant to BCC 79.105(1) shall be limited to the extent that the accumulation of solid waste by-products of a livestock operation as defined in BCC 21.005(6) shall not be detectable beyond the confines of parcels or lots engaged in farm use. The Planning Official in consultation with the Environmental Health Division may order the operator of a farm use in violation of this section to abate the nuisance by reducing the intensity of livestock on the parcel or lot, off-site disposal of solid waste or any other appropriate method of abatement. Failure to comply with an order will be considered a violation of this code subject to enforcement proceedings in Chapter 26 of the Benton County Code. [Ord 90-0069, Ord 96-0118, Ord. 99-0147]

**79.305 Minimum Parcel or Lot Size.** The minimum parcel or lot size in the Rural Service Center Zone shall be determined by the type of services currently serving a parcel or lot as follows:

- (1) If a parcel or lot is served by both an approved community, municipal or public water system and an approved community or public sewerage system, the minimum parcel or lot size shall be 6,000 square feet for each dwelling unit or commercial use.
- (2) If a parcel or lot is served by either an approved community, municipal, or public water system, or an approved community or public sewerage system, the minimum parcel or lot size shall be 20,000 square feet.
- (3) If a parcel or lot is not served by either an approved community, municipal or public water system or an approved community or public sewerage system, the minimum parcel or lot size shall be one acre. [Ord 90-0069, Ord 96-0118]

**79.405 Site Development Plan.** When a building addition, new construction, or placement of a non-residential structure allowed pursuant to BCC 79.105(2) or 79.205 is proposed in the Rural Service Center Zone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The plan shall demonstrate compliance with siting standards provided in BCC 79.505 and other provisions of this code. [Ord 90-0069]

**79.505 Siting Standards.** All structures allowed in the Rural Service Center Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

- (1) The setback to a road right-of-way shall be at least twenty (20) feet, except as provided for commercial structures sited pursuant to BCC 79.505(15).
- (2) The side setback shall be at least six (6) feet, unless a common or impervious wall is provided on a lot line, in conformance with the zero property line adjustment development standards in BCC 65.035.
- (3) The rear setback shall be at least twenty (20) feet.
- (4) Architectural features shall not project more than two (2) feet into a required setback.
- (5) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
- (6) No accessory structure shall be built within a setback abutting a road. There is no required setback for structures of 120 square feet or less. A required side or rear setback for an accessory structure may be

reduced to three (3) feet if the accessory structure:

- (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet area.
- (7) The primary building and all accessory buildings combined shall not cover more than thirty-five percent (35%) of the total parcel or lot area.
- (8) A structure shall not exceed forty (40) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
- (9) Off-street parking and loading shall be consistent with this code.
- (10) Access shall be designed to cause minimum interference with traffic movements on abutting streets.
- (11) The arrangement of buildings, parking areas, signs, and other facilities shall be designed and oriented to minimize noise and glare relative to adjacent properties.
- (12) Artificial lighting, including illuminated signs and lights for parking areas, shall be arranged and constructed to avoid direct glare or unreasonable interference with the use and enjoyment of adjacent properties.
- (13) All commercial uses, including parking and loading areas, shall be screened from adjoining residential property by the establishment and maintenance of a landscaped buffer or the erection of a sight-obscuring fence which meets the following standards:
- (a) A sight-obscuring fence must be a minimum of five (5) feet in height.
  - (b) A landscaped buffer must be comprised of coniferous plant material which will achieve a height of five (5) feet within four (4) years of planting.
- (14) Parking areas for commercial uses not located on an arterial or collector roadway, as designated in the County Comprehensive Plan, shall be located either in a side or rear yard, or be screened pursuant to BCC 79.505(13).
- (15) A commercial building located on an arterial or collector, as designated in the County Comprehensive Plan, may be located with no front yard setback. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

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# Chapter 81

## Special Use (SU)

**81.005 Purpose.** The Special Use Zone shall provide for the recognition of unique existing or planned uses, facilities, and/or developments that are not suitably addressed by the other zones of the Benton County Development Code. The Special Use Zone shall require the designation of a Special Use Subzone to define specific permitted uses, conditional uses, site development requirements, and siting standards within each area to which the Special Use Zone is applied. [Ord. 2012-0247]

### APPLICATION

**81.010** The Special Use Zone may be applied where the following requirements are met:

- (1) The property is designated Special Use on the adopted Comprehensive Plan Map, or the property is located within an urban growth boundary;
- (2) The property is either:
  - (a) The subject of an exception to one or more Statewide Planning Goal(s), in which the exception is based on existing or planned uses that do not fit within another zone in this Code, and the planned uses are limited to those justified through the goal exception; or
  - (b) Located within an urban growth boundary and:
    - (A) The proposed zoning is consistent with the applicable city's Comprehensive Plan; and
    - (B) The existing or planned uses do not fit within another zone in this Code; or
  - (c) Located within an unincorporated community boundary and:
    - (A) The proposed zoning is consistent with the adopted community plan; and
    - (B) The existing or planned uses do not fit within another zone in this Code.
- (3) Special Use Subzone standards specific to the subject property are applied to the property.

[Ord. 2012-0247]

**81.015 Process.** Application of the Special Use Zone to a property shall require initiation of the following elements as necessary. These elements may be processed concurrently.

- (1) Zone change pursuant to BCC 53.510;
- (2) Development Code text amendment pursuant to BCC 53.610; and
- (3) Comprehensive Plan text and map amendments, and any associated goal exceptions, pursuant to BCC 53.605-625.

[Ord. 2012-0247]

**81.020 Subzones.** The Special Use Zone includes the following approved Subzones:

- (1) Children's Farm Home Subzone (SU-CFH) [Ord. 2012-0247]
- (2) Airport Industrial Park Subzone (SU-AIP) [Ord. 2012-0249]

## **81.100 Special Use - Children's Farm Home Subzone (SU-CFH)**

**81.105 Purpose.** The Children's Farm Home Subzone (CFH) of the Special Use Zone shall establish standards for development within the Children's Farm Home Campus in Benton County. By providing appropriate land use controls, this subzone shall enable the continued operation of the Children's Farm Home, and address needs for growth, change, and/or expansion to accommodate associated, ancillary, or otherwise related uses. [Ord. 2012-0248]

**81.110 Application.** The Children's Farm Home Subzone shall apply to areas that are within the Special Use Zone, are designated Special Use on the Comprehensive Plan Map, and are the subject of an Exception to Statewide Planning Goals, 3, 4, 11 and 14 for the Children's Farm Home Campus. [Ord. 2012-0248]

**81.115 Definitions.** As used in this chapter.

- (1) "Community treatment program" means a facility or collection of facilities providing comprehensive care for a specific population, predominantly persons under 18 years of age; including but not limited to educational activities, recreational activities, secured adolescent intensive programs, therapeutic activities, vocational training, and residential facilities. The entire CFH campus comprises the community treatment program.
- (2) "Educational activities" means any organized action that is intended to have a formative effect on the mind, character, or physical ability of an individual. In the case of CFH, educational activities occur primarily in classrooms.
- (3) "Recreational activities" means any action intended generally for enjoyment, amusement or pleasure, whether for educational, therapeutic, or leisure purposes. In the case of CFH, recreational activities occur throughout the campus, but primarily within the sports fields, playgrounds, gardens, livestock barns, and indoor multipurpose spaces.
- (4) "Residential facility" means a facility which provides residential care in conjunction with a community treatment program, including facilities needed to maintain a residential population, such as laundry, food service, and common living space. Residential facility includes one or more buildings providing housing for up to 65 individuals who need not be related, per building. Residential facility may also include a single family residence for caretaker, manager, instructor, or care provider.
- (5) "Secured adolescent intensive program" means a program which provides complete therapeutic and educational services in a limited-access, secured facility. In the case of CFH, the secured adolescent intensive program is housed in buildings designed specifically to house such a program and in accordance with State of Oregon and Federal requirements.
- (6) "Therapeutic activities" means any action intended to help people with disabilities to address their specific problems. In the case of CFH, therapeutic activities occur throughout the campus, but primarily in classrooms, clinics, studios, and structured and/or unstructured outdoor recreational areas.
- (7) "Vocational training" means any action intended to provide education and/or direct experience in preparation for employment in a trade, job or profession. In the case of CFH, vocational training occurs throughout the campus but primarily in classrooms, workshops, horticultural areas, and the livestock barns. [Ord. 2012-0248]

**81.120 Subareas.** The purposes of the subareas of the Children's Farm Home Subzone are described in this section. The specific uses allowed in each subarea are identified in BCC 81.125.

- (1) Administration/Vocational (A/V). The A/V subarea shall provide for facilities and uses dedicated primarily to administration of the Children's Farm Home Campus; and vocational training and therapeutic activities associated with a community treatment program.
- (2) Residential/Education (Res/E). The Res/E subarea shall provide for facilities and uses dedicated

primarily to providing residential services associated with a community treatment program; educational activities associated with a community treatment program; and secured adolescent intensive activities.

- (3) Recreational/Utilities (Rec/U). The Rec/U subarea shall provide for facilities and uses dedicated primarily to recreational activities associated with therapeutic activities and/or vocational training; and sewer, water, storm water, electrical, fire protection, telecommunication and other similar utilities serving the Children’s Farm Home Campus.
- (4) Highway Buffer (HB). The HB subarea shall provide for facilities and uses dedicated primarily to providing a landscaped buffer between the Children’s Farm Home Campus and the adjacent State highway.

[Ord. 2012-0248]

**81.125 Permitted Uses.** The following uses are allowed within the Children’s Farm Home Subzone to the extent that they relate to and serve the community treatment program as defined in BCC 81.115. The SU-CFH subarea(s) where each use is allowed is/are indicated in Table 1:

**Table 1 Permitted Uses**

Use	A/V	Res/E	Rec/U	HB
(1) Administrative and professional offices ;	X			
(2) Educational activities ;	X	X		
(3) Vocational training ;	X	X		
(4) Dormitory housing ;		X		
(5) Secured adolescent intensive program ;		X		
(6) Cafeteria/group dining ;	X	X		
(7) Day care center or preschool nursery ;	X	X		
(8) Recreational activities and facilities ;	X	X	X	
(9) Health clinic, health care facility including out-patient services ;	X	X		
(10) Accessory use or structure ;	X	X	X	
(11) Undeveloped open space ;	X	X	X	X
(12) Art or craft gallery or gift shop, related to onsite education, vocational training, or treatment, not exceeding 2,000 square feet, located within a larger multi-purpose building ;	X			
(13) Café open to the public and related to onsite vocational training and limited to 50 seats, located within a larger multi- purpose building;	X			
(14) Place of public assembly open to the public and limited to 200 seats, including church, auditorium, meeting room, theater, or other similar non-profit community facility ;	X			
(15) Outdoor activities such as ceremonies, games, festivals, and presentations;	X		X	
(16) Private and public utilities; provided that a community sewer system is not allowed to serve any land outside the Children’s Farm Home Subzone.	X	X	X	X

[Ord. 2012-0248]



**81.130 Existing Uses.** A lawfully established use not listed in BCC 81.125 existing as of September 20, 2012 shall be considered an outright permitted use and shall not be subject to the nonconforming use provisions of BCC 53.305 through 53.335. The total square footage in one or more buildings devoted to such use may be replaced or expanded through Site Development Plan Review pursuant to Section 81.145. [Ord. 2012-0248]

**81.135 Conditional Uses.** The following uses may be allowed in the Children’s Farm Home Subzone by conditional use permit approved by the Planning Official pursuant to BCC 53.205 through 53.235:

- (1) One single-family residence per parcel, for caretaker, manager, instructor, or provider in conjunction with a community treatment program.
- (2) Change in the boundary of any subarea. [Ord. 2012-0248]

**81.140 Minimum Parcel or Lot Size.** The minimum parcel size in the Children’s Farm Home Subzone shall be two acres. [Ord. 2012-0248]

**81.142 Property Line Adjustments and Land Divisions.** Property line adjustments and partitions are allowed in the Children’s Farm Home Subzone. A maximum of three additional parcels may be created by partition within the Children’s Farm Home Subzone in existence on September 20, 2012. Series partitions and subdivisions are prohibited in the Children’s Farm Home Subzone. [Ord. 2012-0248]

**81.145 Site Development Plan.**

- (1) When a building addition or replacement, change of use, new construction, new road/ driveway, or placement of a structure is proposed in the Children’s Farm Home Subzone, the applicant shall submit a site development plan prior to the issuance of building permits. A site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, water supply, sewage disposal, public utilities, and exterior lighting. The site development plan shall be accompanied by a letter prepared by a licensed professional engineer competent to practice transportation engineering documenting the expected AM peak hour, PM peak hour, and average daily traffic trip generation resulting from the proposed development or change of use. The site development plan shall demonstrate compliance with siting standards provided in BCC 81.150 and other provisions of this Code.
- (2) Any change, within the permitted uses, to the scope of services offered, type of services offered, and/or specific population served, shall require written notification to the Benton County Board of Commissioners and Community Development Department. [Ord. 2012-0248]

**81.150 Siting Standards.** All structures allowed in the Children’s Farm Home Subzone shall be sited in compliance with BCC Chapters 91, Special Use Standards, and 99, General Development Standards, and the standards of this section. In the case of a conflict between BCC Chapters 91 and 99 and this section, the standards of this section will control.

- (1) Either the site shall be adequately served by water, sewage disposal, and improved roads, or final approval of the site development plan shall be conditioned on assurances for the provision of the necessary facilities.
- (2) The setback to a public road right-of-way shall be at least twenty-five (25) feet, and to a highway right-of-way the setback shall be 50 feet. Such area shall be utilized exclusively for landscaping, fences, decorative walls, and driveways.
- (3) Except as otherwise provided in this section, there shall be a setback of at least fifteen (15) feet from the boundary of the CFH subzone.
- (4) No setback is required for a structure of 120 square feet or less. A side or rear setback for an accessory structure may be reduced to three (3) feet from the subzone boundary if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;

- (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (5) A structure which is not a water-dependent use shall be placed at least fifty (50) feet from the ordinary high water line of a lake, river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.
  - (6) The setback to adjoining property in a resource zone shall be at least thirty (30) feet. Off-street parking areas and setbacks adjacent to adjoining resource-zoned property shall be adequately landscaped and screened to create a visual buffer.
  - (7) A structure shall not exceed sixty (60) feet in height. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.
  - (8) Off-street parking and loading for new development and improvements shall be consistent with BCC 91.615 to 91.655. The number of parking spaces in a common parking area serving more than one use shall meet the normal operation peak demand of all uses, based on hours of operation. In the case where a single use is proposed on an individual parcel, the standards of BCC 91.605 shall apply.
  - (9) The arrangement of buildings, parking areas, signs, and other facilities shall be designed and oriented to minimize noise and glare effects on adjacent properties.
  - (10) Artificial lighting, including lights for parking areas, shall be arranged and constructed to avoid direct glare or unreasonable interference with the use and enjoyment of adjacent properties.

[Ord. 2012-0248]

## **81.200 Special Use - Airport Industrial Park (SU-AIP)**

**81.205 Purpose.** The Airport Industrial Park zone shall provide areas where selected commercial, manufacturing, and/or other industrial activities that support a stable and sustainable local economy, vital to the health, welfare, and prosperity of County residents, can occur within the Corvallis Municipal Airport Industrial Park (AIP). [Ord. 2012-0249]

**81.210 Application.** The Airport Industrial Park zone shall apply to areas within the Corvallis Municipal Airport Industrial Park which is on land owned by the City of Corvallis, inside the Corvallis urban growth boundary in Benton County. [Ord. 2012-0249]

**81.220 Additional Standards.** The Airport Industrial Park is subject to additional notification and development standards set forth by the Federal Aviation Administration, Oregon Department of Aviation, and the Airport Overlay zone (BCC Chapter 86). [Ord. 2012-0249]

**81.225 Limits on Trip Generation.** In no case shall any use approved within the AIP create a condition in which more than 28,322 trip ends per day are generated by the cumulative uses established in the AIP. Trip generation shall be prepared by the applicant and evaluated at the time of site development plan review, consistent with trip generation rate values established in “Trip Generation, 8<sup>th</sup> Edition: An ITE Informational Report,” or successor document, as published and amended by the Institute of Transportation Engineers. [Ord. 2012-0249]

**81.230 Permitted Uses.** The following uses are permitted in the Airport Industrial Park zone. Uses must also comply with the additional siting, development, and other requirements of the Airport Industrial Park Master Plan, which is administered by the City of Corvallis.

**(1) Uses allowed without building footprint size limitations.**

- (a) Farm or forest use as defined in BCC 51.020.
- (b) All intensities of industrial use, including manufacturing, processing, and assembling, as well as research and development. These uses may create continuous, frequent, or repetitive noises or vibrations; noxious or toxic fumes, odors, or emissions; and electrical disturbances. Also allowed as an accessory use to a primary industrial use are:
  - (A) Technical support center remotely assisting customers with items produced in the AIP; and
  - (B) The on-site sale of items produced in the AIP, except for marijuana and items containing marijuana, provided that the on-site sales are a subordinate part of the total sales of items produced within the AIP by a given industrial use. [Ord. 2017-0278].
- (c) Industrial or scientific research facilities and testing laboratories.
- (d) Wholesale, storage, distribution, and handling of materials and equipment. Includes truck and train freight and distribution terminals, storage warehouses, and moving/storage firms; excludes personal mini-storage.
- (e) Cafeterias limited to serving the employees of one or more of the facilities located at the AIP.
- (f) Storage of vehicles, including:
  - (A) Vehicles used regularly in business operation and not available for sale; and
  - (B) Operating vehicles being stored long-term.
- (g) Electrical and gas distribution substations, radio facilities, wireless communication infrastructure, and similar utilities, but not including business or customer service offices.
- (h) Fire stations, police stations, emergency ambulance services, and similar uses.

- (i) Law enforcement correctional facility.
  - (j) Airport.
  - (k) Mass transit waiting/turnaround facility.
  - (l) Industrial-related vocational or trade schools.
  - (m) Laundry agencies, diaper services, linen supply services, and dry cleaning.
  - (n) Building maintenance, custodial, and landscape service establishments.
  - (o) Construction-related office in conjunction with the same company's on-site equipment and materials storage.
  - (p) Bark, rock, and landscaping storage and sales.
  - (q) Facilities that recycle or reclaim metals, plastic, or other materials.
  - (r) Composting accessory to a primary industrial use.
  - (s) Kennel.
  - (t) Pet crematorium.
  - (u) Agricultural supply and large farm machinery/equipment sales and repair.
  - (v) Commercial growing, processing, and wholesaling of marijuana pursuant to a license issued by the State of Oregon. [Ord. 2017-0278]
- (2) **Uses allowed within building footprint size limitations.**
- (a) The combined building footprint of all structures within the AIP zone dedicated to the following uses shall not exceed 90,000 square feet.
    - (A) Business support services, including clerical, protective, and blueprint services, primarily to firms rather than individuals. Employment services and other uses that involve frequent trips from the general public are prohibited.
    - (B) Professional, executive, management, and administrative offices. Medical offices and clinics, law firms, as well as other uses that involve frequent trips from the general public, are prohibited.
    - (C) Call centers, telemarketing centers, technical support, and similar facilities where employees make phone or electronic contact with the public.
  - (b) The combined building footprint of all structures within the AIP zone dedicated to the following uses shall not be exceed 10,000 square feet. Each separate company or organization shall have a maximum building footprint of 5,000 square feet.
    - (A) Convenience stores and farm stands intended to primarily serve AIP employees and users.
    - (B) Eating establishments with food that can be consumed either on or off the premises, including sit down restaurants, coffee shops, fast order food, and mobile food carts. Drive-through establishments are prohibited.
- [Ord. 2012-0249]

**81.235 Site Development Plan.** When a building addition, new construction, or placement of a structure is proposed in the Airport Industrial Park zone, prior to the issuance of building permits the applicant shall submit a site development plan, pursuant to the intergovernmental agreement between the City of Corvallis and Benton County. The site development plan shall contain an appropriate level of detail showing existing and proposed locations of buildings, access, parking, loading, landscaping, drainage, public utilities, and exterior lighting. The plan shall demonstrate compliance with the additional siting standards of the Airport

Industrial Park Master Plan. The design and construction of roads and other County appurtenances requires the approval of the County Engineer. [Ord. 2012-0249]

**81.240 Development Standards.** All structures located in the Airport Industrial Park zone are subject to the requirements of the Airport Industrial Park Master Plan. Additionally, all development shall be in compliance with these standards:

- (1) Either every site shall be served by water, sewage disposal, stormwater drainage, sidewalks and improved roads to the standard specified by Chapter 99 or as approved by the County Engineer, or final approval of the site development plan shall be contingent on assurances for the provision of the necessary facilities.
- (2) The setback to a road right-of-way shall be at least twenty-five (25) feet, and shall be utilized primarily for landscaping, fences, walls and driveways.
- (3) A side or rear setback between businesses shall be determined by building code and the AIP Master Plan. Side and rear setbacks from the property line shall be at least ten (10) feet.
- (4) No setback is required for a structure of 120 square feet or less.
- (5) A side or rear setback for an accessory structure may be reduced to three (3) feet if the structure:
  - (a) Is detached from other buildings by five (5) feet or more;
  - (b) Does not exceed a height of twenty (20) feet; and
  - (c) Does not exceed an area of 500 square feet.
- (6) Architectural features shall not project more than two (2) feet into a required setback, except awnings, which may project up to six (6) feet into the required setback.
- (7) A landscape plan shall be submitted and implemented for the first twenty-five (25) feet of all setbacks adjacent to a road in compliance with the following minimum standards:
  - (a) Seventy-five percent (75%) of the area shall contain trees and other live landscape materials;
  - (b) A vision clearance area consistent with the geometry and speeds of the roads shall be maintained at the intersection of two rights-of-way or a right-of-way and a driveway. No structure, vegetation or embankment shall be permitted in a vision clearance area in excess of two (2) feet in height above the center of the road or driveway, other than trees approved by the City Urban Forester and maintained in a manner that allows clear vision.
  - (c) Off-street parking areas shall be landscaped. Trees shall be included when feasible.
- (8) Maximum building height in the Airport Industrial Park zone is subject to the building height restrictions of the Airport Industrial Park Master Plan and the Airport Overlay zone (BCC Chapter 86), but in no case shall building height exceed 75 feet. Structures such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles, agricultural buildings, and other similar objects not used for human occupancy are not subject to the building height limitations of this code, but are subject to Federal Aviation Administration restrictions.
- (9) Off-street parking and loading shall comply with the Airport Industrial Park Master Plan. Off-street parking shall be provided at a minimum of 1 space per 1,000 square feet of building footprint, unless a lesser amount is demonstrated to be adequate because the nature of the use does not generate a large volume of traffic or the business owner has a feasible program for vehicle trip reduction (such as carpooling, mass transit ridership, bicycle riding, or telecommuting).
- (10) Access shall be designed to cause minimum interference with traffic movements on abutting streets. Where necessary, additional rights-of-way shall be dedicated to maintain adequate traffic circulation.
- (11) The arrangement of buildings, parking areas, signs and other facilities shall be designed and oriented to minimize noise and glare effects on adjacent properties.

(12) Lighting standards are as follows:

- (a) Artificial lighting, including illuminated signs and lights for parking areas, shall be arranged and constructed to avoid direct glare on adjacent non-industrial and non-commercial properties and to prevent conflict with airport operations. Federal Aviation Administration rules and the requirements of the Airport Overlay zone (BCC Chapter 86) apply.
- (b) All installations for street or area lighting shall be designed and installed to be fully shielded (full cutoff), with zero (0) percent light emission above the horizontal plane (90 degrees), except as in the exceptions below. When viewed from a point four (4) feet above grade, bulbs of luminaires shall not be visible from adjacent properties.
  - (A) Lighting that is exempt from these regulations:
    - (i) Lighting in water features governed by Article 680 of the National Electrical Code.
    - (ii) Exit signs and other illumination required by building code.
    - (iii) Lighting for stairs and ramps, as required by building code.
    - (iv) Low voltage landscape lighting, but such lighting should be shielded in such a way as to eliminate glare and light trespass.
    - (v) Lighting required by the Federal Aviation Administration.

(13) The sign requirements in Specific Use Standards (BCC Chapter 91) shall not apply as long as the City of Corvallis maintains ownership of the Airport Industrial Park and the Airport Industrial Park Master Plan standards apply.

(14) In the event the Airport Industrial Park Master Plan no longer applies, the placement of roads, structures, and landscaping shall allow for convenient and safe pedestrian access between buildings, via paths on which pedestrians are not required to share their space with autos.

[Ord. 2012-0249]

# Chapter 83

## Floodplain Management Overlay (/FP)

*Note: For legislative history, refer to Ordinance 2021-0304, effective 10/7/2021.*

*The legislative history is documented in the following ordinance exhibits:*

- *Exhibit 2 – Former code with references to the 2021 adopted code section numbers*
- *Exhibit 3 – 2021 adopted code with references to former code section numbers*
- *Exhibit 4 – Additional quick-reference in the form of a table that identifies 2021 adopted code section numbers and former code section numbers*

### STATUTORY AUTHORITY, FINDINGS OF FACT, PURPOSE, AND METHODS

#### 83.005 Statutory Authorization.

The State of Oregon has in ORS 203.035 delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, Benton County does ordain as follows:

(1) Findings of Fact

- (a) The flood hazard areas of Benton County are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses may be caused by the cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities, and when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

(2) Statement of Purpose

- (a) The Floodplain Management Overlay Zone shall implement the provisions of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as well as the Benton County Comprehensive Plan.
- (b) It is the purpose of this ordinance to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in special flood hazard areas by provisions designed to:
  - (A) Protect human life, health, and property;
  - (B) Minimize expenditure of public money for costly flood control projects;
  - (C) Minimize the need for rescue, emergency services, and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - (D) Minimize prolonged business interruptions and unnecessary disruption of commerce, access and public service during times of flood;
  - (E) Minimize damage to public facilities and utilities such as water purification and sewage treatment plants; water and gas mains; electric, telephone and sewer lines; streets; and bridges located in special flood hazard areas;
  - (F) Decrease the cost of flood insurance;

- (G) Help maintain a stable tax base by providing for the sound use and development of special flood hazard areas;
  - (H) Ensure that potential buyers are notified that property is in a special flood hazard area;
  - (I) Ensure that those who occupy the special flood hazard areas assume responsibility for their actions;
  - (J) Recognize and preserve the natural flood mitigation functions of floodplains;
  - (K) Preserve the ecosystem functions of floodplains; and
  - (L) Participate in and maintain eligibility for flood insurance and disaster relief.
- (3) Methods of Reducing Flood Losses. In order to accomplish its purposes, this ordinance includes methods and provisions for:
- (a) Restricting or prohibiting development which is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities
  - (b) Requiring that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
  - (c) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
  - (d) Controlling filling, grading, dredging, and other development which may increase flood damage;
  - (e) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas.

**83.020 Definitions.** For the purposes of this chapter, the following definitions apply. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage.

- (1) “1% Chance Floodplain” has the same meaning as “Special Flood Hazard Area.” It means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The 1% Chance Floodplain is also referred to as the “100-Year Floodplain”.
- (2) “100-Year Floodplain” has the same meaning as “Special Flood Hazard Area”. Note: The Federal Emergency Management Agency (FEMA) discourages the use of the term “100-year floodplain” because it implies that a flood occurs only once every one hundred years, rather than the true statistical meaning of the term.
- (3) “Agricultural Structure” means a nonresidential structure customarily provided in conjunction with farm use for which, except for the fact that the structure is located within the special flood hazard area, would be exempt from building code requirements pursuant to ORS 455.315. Any such structure located in a special flood hazard area is not eligible for exemption from building code requirements and must obtain approval for a structural permit.

Note: The term “agricultural structure” has an alternate meaning when used in BCC 83.410; the alternate meaning is defined in that section and is specific to granting a minor variance for structures associated with agricultural use.

- (4) “Appeal” means a request for a review of the interpretation of any provision of this ordinance or a request for a variance.
- (5) “Area of Shallow Flooding” See definition for “Shallow Flooding Area” below.
- (6) “Area of Special Flood Hazard” See definition for “Special Flood Hazard Area” below.



- (7) “Base Flood” See definition listed in BCC 51.020.
- (8) “Base Flood Elevation (BFE)” See definition listed in BCC 51.020.
- (9) “Basement” means any area of a building having its floor subgrade (below ground level) on all sides.
- (10) “Below-Grade Crawlspace” means an enclosed area below the base flood elevation and with an interior grade below the lowest adjacent exterior grade of the structure in which:
  - (a) The interior grade is not more than two feet below the lowest adjacent exterior grade;
  - (b) The height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed four (4) feet at any point; and
  - (c) The height, measured from the interior grade of the crawlspace to the lowest habitable floor does not exceed five (5) feet at any point.
- (11) “Building” See definition for “Structure” below.
- (12) “Conditional Letter of Map Amendment (CLOMA)” means FEMA’s comment on a proposed structure or group of structures that would, upon construction, be located on existing natural ground above the base flood elevation on a portion of a legally defined parcel of land that is partially inundated by the base flood.
- (13) “Conditional Letter of Map Revision (CLOMR)” means FEMA’s comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area.
- (14) “Conditional Letter of Map Revision - Based on Fill (CLOMR-F)” means FEMA’s comment on a proposed project that would, upon construction, result in a modification of the special flood hazard area through the placement of fill outside the existing regulatory floodway.
- (15) “Critical Facility” means a facility which, if impacted by flooding, could have significant negative impact on the greater community. Consequently, even a slight chance of such a facility flooding carries a high risk to the community. Critical facilities include, but are not limited to schools; nursing homes; hospitals; police, fire, and emergency response installations; and installations which produce, use, or store hazardous materials or hazardous waste.
- (16) “Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures; fences; bridges and culverts; mining, dredging, filling, grading, paving, excavation or drilling operations; or storage of equipment or materials located within the special flood hazard area.
- (17) “Elevated Structure” means a non-basement structure which has a lowest habitable floor that is elevated above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.
- (18) “Flood” or “Flooding” means:
  - (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
    - (A) The overflow of inland water;
    - (B) The unusual and rapid accumulation or runoff of surface waters from any source; and/or
    - (C) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subsection (a)(B) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

- (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (a)(A) of this definition.
- (19) “Flood Elevation Study” See definition for “Flood Insurance Study” below.
- (20) “Flood Hazard” See definition listed in BCC 51.020.
- (21) “Flood Insurance Rate Map (FIRM)” means the official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- (22) “Flood Insurance Study (FIS)” means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.
- (23) “Flood Proofing” See definition listed in BCC 51.020.
- (24) “Floodplain” See definition listed in BCC 51.020.
- (25) “Floodplain Administrator” means the community official designated by title to administer and enforce the floodplain management regulations.
- (26) “Flood-specific Venting” means two or more openings in the walls of an enclosed space below an elevated structure or the walls of a non-elevated structure. Such openings shall qualify as flood-specific venting if they meet the standards of either (a) or (b), or a combination of (a) and (b) such that the total vent area provided by the combination of prescriptive and pre-fabricated vents meets the venting required by (a)(B) and (b)(A):
  - (a) Prescriptive flood-specific venting requirements:
    - (A) Underfloor vents as required to satisfy ventilation of crawlspace areas per applicable building code do not satisfy the standards for flood-specific venting;
    - (B) A minimum of two flood-specific openings having a total net area of not less than one (1) square inch for each square foot of enclosed area (measured on the exterior of the enclosure walls) subject to flooding shall be provided. Only the portion of a flood-specific opening that is below the base flood elevation shall be included in the calculation;
    - (C) Flood-specific openings shall be installed on at least two exterior walls of each enclosed space;
    - (D) The bottom of all flood-specific openings shall be no higher than one (1) foot above adjacent grade; and
    - (E) Flood-specific openings may be equipped with screens, louvers, or other coverings or devices provided that they:
      - (i) Permit the automatic entry and exit of floodwaters into and out of the enclosed areas, and
      - (ii) Are accounted for in the determination of the net open area.
  - (b) Pre-fabricated flood vents certified by the Federal Emergency Management Agency (FEMA):
    - (A) A minimum of two flood-specific openings having a total net area certified by FEMA as sufficient for the enclosed area subject to flooding shall be provided. Only the

portion of an opening that is below the base flood elevation shall be included in the calculation;

- (B) Flood-specific openings shall be installed on at least two exterior walls of each enclosed space; and
  - (C) The bottom of all flood-specific openings shall be no higher than one (1) foot above adjacent grade.
- (27) “Floodway” See definition listed in BCC 51.020.
- (28) “Floodway Fringe” See definition listed in BCC 51.020.
- (29) “Flow-through Construction” means a structure that does not hinder or obstruct the movement of, or displace, surface floodwaters. An example of “flow-through construction” would be elevation of a structure on posts, piers, or piles. Neither flood-specific venting nor underfloor vents required to satisfy air ventilation requirements constitute “flow-through construction”.
- (30) “Functionally Dependent Use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.
- (31) “Hazardous Material” and “Hazardous Waste” mean substances defined by the Oregon Department of Environmental Quality as including any of the following:
- (a) Hazardous waste as defined in ORS 466.005;
  - (b) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances defined in ORS 453.005;
  - (c) Communicable disease agents as regulated by the Health Division under ORS Chapter 431 and 433.010 to 433.045 and 433.106 to 433.990;
  - (d) Hazardous substances designated by the United States Environmental Protection Agency (EPA) under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;
  - (e) Substances listed by the United States EPA in section 40 of the Code of Federal Regulations, Part 302 – Table 302.4 (list of Hazardous Substances and Reportable Quantities) and amendments;
  - (f) Material regulated as a Chemical Agent under ORS 465.550;
  - (g) Material used as a weapon of mass destruction, or biological weapon;
  - (h) Pesticide residue; or
  - (i) Dry cleaning solvent as defined by ORS 465.200(9).
- (32) “Highest Adjacent Grade” means the highest natural elevation of the ground surface prior to, during, and after construction next to the proposed walls of a structure.
- (33) “Historic Structure” means any structure that is:
- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
  - (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - (A) By an approved state program as determined by the Secretary of the Interior; or
    - (B) Directly by the Secretary of the Interior in states without approved programs.
- (34) “Letter of Map Amendment (LOMA)” means FEMA’s official amendment, by letter, of the Flood Insurance Rate Map (FIRM) based on technical data showing that an existing structure is located on naturally high ground (i.e. it has not been elevated by fill), or that an area of land consists of naturally high ground, this is equal to or higher than the base flood and was inadvertently included in the special flood hazard area.
- (35) “Letter of Map Change (LOMC)” means an official Federal Emergency Management Agency (FEMA) determination, by letter, to amend or revise effective Flood Insurance Rate Maps and Flood Insurance Studies. The following are categories of LOMCs: Conditional Letter of Map Amendment (CLOMA), Conditional Letter of Map Revision (CLOMR), Conditional Letter of Map Revision – Based on Fill (CLOMR-F), Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), Letter of Map Revision – Based on Fill (LOMR-F), and Physical Map Revision (PMR).
- (36) “Letter of Map Revision (LOMR)” means FEMA’s modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area. An approved LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report and, when appropriate, includes a description of the modifications. A LOMR approval is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.
- (37) “Letter of Map Revision - Based on Fill (LOMR-F)” means FEMA’s modification of the special flood hazard area shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.
- (38) “Lowest Adjacent Grade” means the lowest natural elevation of the ground surface prior to, during, and after construction next to the proposed walls of a structure.
- (39) “Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
- (40) “Lowest Habitable Floor” See definition for “Lowest Floor” above.
- (41) “Manufactured Dwelling” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured dwelling" does not include a "recreational vehicle" and is synonymous with the term “manufactured home”.
- (42) “Manufactured Dwelling Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.
- (43) “Mean Sea Level” means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

- (44) “New Construction” for floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by Benton County and includes any subsequent improvements to such structures.
- (45) “Non-residential Structure” means any structure other than:
- (a) A dwelling; or
  - (b) A structure accessory to a dwelling.
- (46) “Physical Map Revision (PMR)” means FEMA’s physical revision and republication of an effective Flood Insurance Rate Map (FIRM), or a portion of an effective FIRM, or a Flood Insurance Study (FIS) report. PMRs are generally based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area.
- (47) “Residential Structure” means a dwelling (including an accessory dwelling unit), manufactured dwelling, or accessory living area in a separate structure on same property.
- (48) “Recreational Vehicle” means a vehicle which is:
- (a) Built on a single chassis;
  - (b) 400 square feet or less when measured at the largest horizontal projection;
  - (c) Designed to be self-propelled or permanently towable by a light duty truck; and
  - (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (49) “Shallow Flooding Area” means a designated Zone AH on a community’s Flood Insurance Rate Map (FIRM) with a one percent (1%) or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (50) “Special Flood Hazard Area (SFHA)” means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AE, AH, or A1-A30. This area includes both the floodway fringe and the floodway and is commonly referred to as the “100-year floodplain”. “Special flood hazard area” is synonymous in meaning and definition with the phrase “area of special flood hazard”.
- (51) “Start of Construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit.
- (a) The actual start means either the first placement of permanent construction of a structure on a site (such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation) or the placement of a manufactured dwelling on a foundation.
  - (b) Permanent construction does not include:
    - (A) Land preparation, such as clearing, grading, and filling;
    - (B) Installation of streets and/or walkways;
    - (C) Excavation for a basement, footings, piers, or foundations or the erection of temporary forms; or
    - (D) Installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

- (c) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (52) “Structure” means a building with a roof and two (2) or more rigid exterior walls, including a dwelling, a manufactured dwelling, or a gas or liquid storage tank that is principally above ground.
- (53) “Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
- (54) “Substantial Improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:
  - (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
  - (b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure.”

In determining “substantial improvement,” the Floodplain Administrator may refer to the most recent version of the FEMA Desk Reference for Local Officials (FEMA-480).

- (55) “Vacant Land” means a parcel or lot on which:
  - (a) No dwelling is located; or
  - (b) A dwelling was previously located but the dwelling was removed more than one year prior to submission of a complete construction or placement permit application for a replacement dwelling.
- (56) “Variance” means a grant of relief by Benton County from the terms of a floodplain management regulation.
- (57) “Violation” means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

## **GENERAL PROVISIONS**

### **83.100 Lands to Which this Ordinance Applies.**

This ordinance shall apply to all special flood hazard areas within the jurisdiction of Benton County.

### **83.110 Basis for Establishing the Special Flood Hazard Areas.**

- (1) The Floodplain Management Overlay Zone shall apply to all special flood hazard areas identified by the Federal Insurance Administrator in the scientific and engineering report entitled “Flood Insurance Study for Benton County, Oregon and Incorporated Areas,” revised December 8, 2016, with accompanying Flood Insurance Rate Maps (FIRM), except as otherwise provided by this code, adopted effective June 2, 2011 and as revised by:
  - (a) Physical Map Revision (PMR) of Panels 41003 0094G, 41003C 0111G, 41003C 0112G, 41003C 0113G, and 41003C 0114G, effective December 8, 2016;
  - (b) Letter of Map Revision (LOMR) Case No. 13-10-0260P, effective November 29, 2013;

- (c) LOMR Case No. 14-10-0472P, effective July 14, 2014;
- (d) LOMR Case No. 17-10-1169P, effective June 29, 2018;
- (e) LOMR Case No. 17-10-1546P, effective March 29, 2018; and
- (f) LOMR Case No. 18-10-0715P, effective March 28, 2019.

The Flood Insurance Study (FIS) and accompanying maps are hereby incorporated by reference into the Development Code and declared to be a part of this ordinance. The FIS and FIRM panels are on file at the Benton County Community Development Department office.

- (2) The Floodplain Management Overlay Zone is divided into two subzones: the floodway and the floodway fringe. The boundaries of the floodway and the floodway fringe shall be those delineated on the Flood Insurance Rate Maps.
- (3) Corvallis Urban Fringe. Floodplain and floodway boundaries within the Corvallis Urban Fringe (the unincorporated portion of the Corvallis Urban Growth Boundary) shall be determined pursuant to the following subsections. Furthermore, within the Corvallis Urban Fringe, in addition to the provisions of this chapter that apply to unincorporated Benton County in general, the restrictions and use limitations specified in BCC 83.230(2)(d) and 83.700. In the case of any conflicts between the additional provisions in BCC 83.230(2)(d) and 83.700 and the provisions of this chapter that apply to unincorporated Benton County in general, the more restrictive shall apply.
  - (a) Floodway.
    - (A) General Determination. The floodway within the unincorporated portion of the Corvallis Urban Fringe shall be based upon a 0.2-foot rise standard for an increase in the base flood elevation as shown on the Flood Insurance Rate Maps identified in BCC 83.110(1) rather than a one foot rise standard.
    - (B) Map Refinements. For precise determinations when development activities are proposed near a mapped floodway, the applicant shall submit information prepared by an Oregon-registered Professional Land Surveyor or Oregon-licensed Civil Engineer, demonstrating the area that must be kept free from encroachments in order to discharge the base flood (100-year flood) without cumulatively increasing the water surface elevation more than 0.2 feet and demonstrating that the proposed activities will not impact the floodway.
  - (b) Floodplain (Floodway Fringe).
    - (A) General Determination. The floodplain boundaries shall be determined pursuant to BCC 83.110(1).
    - (B) Map Refinement. For the purposes of BCC 83.700(2), floodplain location and extent may be determined using FEMA-provided base flood elevation data combined with topographic mapping (2-foot or less contour interval) produced from a survey by an Oregon-registered Professional Land Surveyor or Oregon-licensed Civil Engineer. Alternatively, the official topographic mapping maintained by the City of Corvallis or Benton County and prepared at a 2-foot (or less) contour interval may be used. However, for purposes of siting structures, floodplain location shall be determined through an elevation survey performed by an Oregon-registered Professional Land Surveyor or Oregon-licensed Civil Engineer.
    - (C) Map Correction. Map corrections to the floodplain location shall be approved by the Planning Official to reflect a Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) approved by the Federal Emergency Management Agency (FEMA).

### **83.120 Coordination with Benton County Building Codes.**

Benton County Building Code, as contained in Chapter 11 of the Benton County Code, aligns with State of Oregon Specialty Codes and contains certain provisions that apply to the design and construction of buildings and structures located in special flood hazard areas. Therefore, this ordinance is intended to be administered and enforced in conjunction with the Benton County Building Code.

### **83.130 Compliance and Penalties for Noncompliance.**

- (1) COMPLIANCE. All development within special flood hazard areas is subject to the terms of this ordinance and required to comply with its provisions and all other applicable regulations.
- (2) PENALTIES FOR NONCOMPLIANCE. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall be enforced subject to the provisions of Chapter 31 of the Benton County Code. Nothing contained herein shall prevent Benton County from taking such other lawful action as is necessary to prevent or remedy any violation.

### **83.140 Abrogation and Severability.**

- (1) ABROGATION. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (2) SEVERABILITY. This ordinance and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

### **83.150 Interpretation.**

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

### **83.160 Warning and Disclaimer of Liability.**

- (1) WARNING. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages.
- (2) DISCLAIMER OF LIABILITY. This ordinance shall not create liability on the part of Benton County, any officer or employee thereof, or the Federal Insurance Administrator for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

## **ADMINISTRATION**

### **83.200 Floodplain Administrator.**

- (1) DESIGNATION. The Planning Official, the Floodplain Administrator, and their designee, are hereby appointed to administer, implement, and enforce this ordinance by granting or denying development



permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

- (2) **DUTIES AND RESPONSIBILITIES.** Duties of the Floodplain Administrator, or their designee, shall include, but not be limited to the provisions of BCC 83.210 through BCC 83.240.

### **83.210 Information to Be Obtained and Maintained.**

The Floodplain Administrator shall obtain, maintain, and make available for public inspection the following information specified in section BCC 83.260.

### **83.220 Permit Review.**

- (1) An application shall be reviewed by the Floodplain Administrator and County Engineer to determine the following:
  - (a) The applicability of the provision of this chapter;
  - (b) Compliance with the applicable provisions of this chapter;
  - (c) All other required local, state, and federal permits have been obtained and approved. Alternatively, a permit may be issued with the condition that all necessary permits required by Federal or State law or County Ordinance will be secured prior to initiation of development activities approved by the permit;
  - (d) The location of the proposed development in relation to a floodway. If any portion of the proposed development is located within the floodway, compliance with the floodway provisions of this ordinance in section BCC 83.800 is required;
  - (e) The proposed development is located in an area where Base Flood Elevation (BFE) data is available either through the Flood Insurance Study (FIS) or from another authoritative source. If BFE data is not available then ensure compliance with the provisions of section BCC 83.310; and
  - (f) Provide to building officials the Base Flood Elevation (BFE) and applicable freeboard elevation requirements for any structure requiring a floodplain development permit and required to be elevated.
  - (g) Whether or not the proposed development qualifies as a substantial improvement as defined in section 83.020. If a proposed development is a substantial improvement, compliance with the provisions of section BCC 83.240 is required.
  - (h) Whether or not the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, compliance with the provisions of BCC 83.230(2) is required.
  - (i) Whether or not the proposed development activity includes the placement of fill or excavation. Any placement of fill or excavation shall comply with applicable standards.
  - (j) The proposed development will not cause an increase of the flood risk to surrounding properties, by changing the flow of floodwaters in a way that increases risk to existing structures or by increasing flood elevations in the immediate vicinity;
- (2) The County Engineer may require the design and installation of mitigative measures necessary to comply with BCC 83.220(1)(j).
- (3) Issuance or denial of a floodplain development permit that requires the exercise of discretion shall include notification of the decision pursuant to BCC 51.625.

### **83.230 Requirement to Notify Other Entities and Submit New Technical Data.**

- (1) **COMMUNITY BOUNDARY ALTERATIONS.** The Floodplain Administrator shall notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority, or no longer has

authority, to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

(2) WATERCOURSE ALTERATIONS.

- (a) The Planning Official shall notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (b) The applicant shall notify the Federal Insurance Administration through submission of a Letter of Map Revision (LOMR) along with either:
  - (A) A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or
  - (B) Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.
- (c) The applicant shall submit when required a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision (LOMR) pursuant to BCC 83.230(3). As a condition of permit approval, the applicant shall be required to ensure compliance with all applicable requirements of BCC 83.230(3).
- (d) Within the Corvallis Urban Fringe, the following shall also apply:
  - (A) Water course alteration by artificial means is prohibited, with exceptions only for:
    - (i) Emergency management purposes;
    - (ii) As mandated by State or Federal actions that supersede local authority; or
    - (iii) To restore to its natural channel a stream whose course has been altered through human action.
  - (B) Prior to the alteration or relocation of a watercourse, the applicant for such authorization must notify the Oregon Department of State Lands (DSL) and submit copies of such notification to the Planning Official.
  - (C) The applicant shall submit certification provided by an Oregon-registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

(3) REQUIREMENT TO SUBMIT NEW TECHNICAL DATA.

- (a) A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Title 44 of the Code of Federal Regulations (CFR), Section 65.3. The community may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA Letter of Map Change (LOMC) process.
- (b) The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:
  - (A) Proposed floodway encroachments that increase the base flood elevation; and

- (B) Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.
- (c) The Floodplain Administrator shall require a Letter of Map Revision (LOMR) to be completed within six (6) months of project completion for the following circumstances:
  - (A) For projects that will expand the boundaries of the special flood hazard area regardless of their effect on the base flood elevation; or
  - (B) For bridge and large culvert installation or replacement projects regardless of their effect on the base flood elevation; or
  - (C) When an applicant has obtained a CLOMR, except as specified in subsections (i) and (ii) below:
    - (i) If a CLOMR is obtained for the purposes of documenting compliance with the Endangered Species Act and the project will not cause a rise as specified in BCC 83.230(3)(b), then a LOMR is not required; or
    - (ii) If a CLOMR is obtained and the applicant subsequently alters the project in such a way that it no longer causes a rise as specified in BCC 83.230(3)(b), then a LOMR is not required.

Note: The exceptions listed in subsections (i) and (ii) above do not apply to projects that meet the criteria in BCC 83.230(c)(A) or (B).

- (d) The applicant shall be responsible for preparing all technical data to support CLOMR/LOMR applications and paying any processing or application fees associated with the CLOMR/LOMR.
- (e) The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this code and all applicable state and federal permits.

### **83.240 Substantial Improvement and Substantial Damage Assessments and Determinations.**

- (1) The Floodplain Administrator shall conduct Substantial Improvement (SI) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with section BCC 83.260(2).
- (2) Substantial Damage (SD) assessments shall be conducted by the Floodplain Administrator, other qualified county staff, or their designee when structures are damaged due to a natural hazard event or other causes. The Floodplain Administrator shall make SD determinations whenever structures within the special flood hazard area are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

## **ESTABLISHMENT OF DEVELOPMENT PERMIT**

### **83.250 Floodplain Development Permit Required.**

- (1) A floodplain development permit shall be obtained prior to construction of a new structure, substantial improvement to any structure, the placement of a manufactured dwelling, or the initiation of other land development activities including, but not limited to, fencing, mining, dredging, filling, grading, paving, excavation or drilling operations within any area horizontally within the special flood hazard area established in section BCC 83.110.
- (2) APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT. An application for a permit shall be submitted on a form provided by the Floodplain Administrator. Documentation to be provided with the application form may include, but is not limited to, plans drawn to scale showing the nature,

location, dimensions, and elevations of the area in question; locations of existing and/or proposed structures, fill, storage of materials drainage facilities; engineering calculations; and other information determined to be necessary for the review of the application by the Floodplain Administrator and County Engineer.

**83.260 Information Required to Be Obtained, Maintained, and Submitted.**

- (1) The following information is required to be submitted with a floodplain development permit application if applicable to the proposed project:
  - (a) Proposed project cost (used for determination of substantial improvement calculation) shall be submitted by the applicant for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.
  - (b) Elevation data for structural construction and alterations shall be submitted by the applicant and maintained by the Floodplain Administrator. This data shall be submitted in the form of Elevation Certificates and/or Letters of Map Change as follows:
    - (A) A Pre-Construction Elevation Certificate approved for inclusion in the permit record prior to start of construction and prior to issuance of a building permit for all new construction, substantial improvements, and non-substantial improvements within the Special Flood Hazard Area (SFHA) or within 50 feet of the SFHA.
    - (B) For all building permits where a Pre-Construction Elevation Certificate shows the building site to be (a) within the SFHA, regardless of the lowest adjacent grade (LAG) shown on the Pre-Construction Elevation Certificate or (b) at or below the Base Flood Elevation if the site is within 50 feet of the SFHA:
      - (i) A Mid-Construction Elevation Certificate approved for inclusion in the permit record after placement of the lowest habitable floor but prior to further vertical construction and prior to approval of underfloor inspection (for site-built structures), setup inspection (for manufactured dwellings), or slab inspection (for pole barn construction if a slab is poured); and
      - (ii) A Post-Construction Elevation Certificate approved for inclusion in the permit record upon completion of all construction activities (including utility installations and final grading) and prior to approval of final inspection.
  - (C) All Elevation Certificates shall:
    - (i) Be prepared and sealed by an Oregon-registered Professional Land Surveyor or an Oregon-licensed Civil Engineer.
    - (ii) Document the elevation (in relation to mean sea level) of the Base Flood Elevation, the natural grade of the building site for a structure prior to start of construction, the finished grade of the building site after completion of all construction, the placement of any fill, the lowest habitable floor (including basement) of the structure, the interior grade of any enclosure below the lowest habitable floor, all attendant utilities, and all other elevation information applicable to the project.
    - (iii) Be submitted to, and approved by, the Floodplain Administrator.
    - (iv) Be maintained by the Floodplain Administrator and made available for public inspection.
  - (D) Alternatives to submission of one or more Elevation Certificates:
    - (i) Letter of Map Amendment (LOMA)

1. May be submitted in place of a Pre-, Mid-, or Post-Construction Elevation certificate.
  2. If the LOMA was issued specific to an existing structure footprint and is submitted for a lateral addition to that structure, then submission of either Mid- and Post-Construction Elevation Certificates or a new LOMA approved for the expanded footprint area is required to document that the finished grade at the addition site remains higher than the Base Flood Elevation.
- (ii) Conditional Letter of Map Revision – Based on Fill (CLOMR-F) and Letter of Map Revision – Based on Fill (LOMR-F)
1. May be submitted in place of a Pre-Construction Elevation certificate for a building site proposed to be elevated through placement of fill.
  2. If a CLOMR-F is approved, then submission of either a LOMR-F (for a building site fully elevated in compliance with the CLOMR-F approval) or submission of Mid- and Post-Construction Elevation Certificates (for a building site not fully elevated as proposed in the CLOMR-F approval) is required.
- (E) All Letters of Map Change (i.e. LOMA, CLOMR-F, and LOMR-F) shall be:
- (i) Approved by the Federal Insurance Administrator.
  - (ii) Submitted to, and approved for inclusion in the permit records by, the Floodplain Administrator.
  - (iii) Maintained by the Floodplain Administrator and made available for public inspection.
- (c) Proposed elevation (in relation to mean sea level) to which any non-residential structure will be floodproofed.
- (d) Certification by an Oregon-licensed Civil Engineer that the floodproofing methods proposed for any non-residential structure meet the floodproofing criteria for non-residential structures in section BCC 83.610.
- (e) Description of the extent to which any watercourse will be altered or relocated.
- (f) Base Flood Elevation data for subdivision proposals or other development when required per sections BCC 83.220 and BCC 83.520(1).
- (g) The amount and location of any fill or excavation activities proposed.
- (2) The Floodplain Administrator shall obtain, maintain, and make available for public inspection the following information:
- (a) All submitted and approved Elevation Certificates;
  - (b) All floodproofing certificates required under this ordinance;
  - (c) All variance actions, including justification for their issuance;
  - (d) All hydrologic and hydraulic analyses performed as required under section BCC 83.800;
  - (e) All substantial improvement and substantial damage calculations and determinations as required under section BCC 83.240; and
  - (f) All records pertaining to the provisions of this ordinance.

### **83.270 Floodplain Development Permit Exemptions.**

- (1) The following development activities in the flood fringe require application for a floodplain development permit, but may be deemed exempt from floodplain development regulations upon submission of the application form and appropriate supporting documentation. These exemptions do not apply to development in the floodway. (Note: Federal and State laws and regulations, including Oregon Drainage Law, may still apply to exempted development activities.)
  - (a) Agricultural activities (not including structures; placement of fill or excavation that impounds, relocates, or redirects the flow of floodwaters; or creation of berms or dikes) of a recurring character on land located outside of the Corvallis Urban Growth Boundary that are considered accepted farming practices (as that term is defined in BCC 51.020).
  - (b) Placement of fill within the floodway fringe, provided all of the following are met:
    - (A) The fill is used solely for purposes such as construction of a sandbox, raised gardening bed, or similar landscaping feature;
    - (B) The fill does not occupy an area that is greater than 500 square feet or 10 percent of the area of the subject parcel that is within the floodway fringe, whichever is less; and
    - (C) The average depth of the fill does not exceed six inches over the area described in subsection (B) above.
  - (c) Maintenance, repair, and/or replacement of existing electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities provided the facilities:
    - (A) Are in-kind maintenance, repair, and/or replacement;
    - (B) Do not constitute a substantial improvement or repair of substantial damage, as defined in BCC 83.020; and
  - (d) Maintenance, minor repair, and/or improvement of existing structures, provided these activities do not:
    - (A) Result in an increase in size or intensity of use; or
    - (B) Constitute substantial improvement or repair of substantial damage, as defined in BCC 83.020.
  - (e) Short-term storage of equipment or materials. Short-term storage means storage occurring outside of flood season or for a period of not more than 180 days during any portion of flood season. Equipment or materials stored during flood season shall be able to be either be easily removed from the area, or shall be items that would not cause harm to property, humans, animals or the environment by becoming buoyant or hazardous.
  - (f) Public agency placement of signs, markers, aids, etc.; and
  - (g) Customary dredging associated with routine ditch maintenance to maintain existing ditch capacity, provided it is consistent with State and Federal laws and permits.
  - (h) Replacement of utility facilities that are necessary to serve established and permitted uses, and that are of equal or lesser size and impact.
  - (i) Transportation facility rehabilitation and maintenance projects that will not result in modifications to existing topography.
  - (j) Subsurface public utility projects that will not ultimately result in modification to existing topography.

## **INTERPRETATION OF FLOODPLAIN BOUNDARIES & USE OF OTHER BASE FLOOD ELEVATION DATA**

### **83.300 Interpretation of Floodplain Boundaries.**

- (1) If it is uncertain whether any proposed development described in BCC 83.250(1) is located in the floodplain (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall determine the applicability of floodplain regulations to the site in question based on the adopted Flood Insurance Rate Maps and any additional relevant data.
- (2) Any person contesting the location of the floodplain boundary shall be given a reasonable opportunity to appeal the interpretation by submission of a Letter of Map Amendment or Letter of Map Revision approved by the Federal Insurance Administrator for the site in question.

### **83.310 Use of Other Base Flood Elevation Data.**

- (1) For special flood hazard areas (such as Zone A) where base flood elevations have not been provided in accordance with section BCC 83.110:
  - (a) The Floodplain Administrator shall obtain, review, and reasonably utilize any Base Flood Elevation data available from a federal, state, or other source, in order to administer the provisions of this chapter.
  - (b) Development proposals shall be reasonably safe from flooding. The test of reasonableness includes use of historical data, high water marks, FEMA-provided Base Level Engineering data, and photographs of past flooding, etc. where available.
  - (c) The applicant shall be responsible for providing sufficient information to the Floodplain Administrator to document:
    - (A) The base flood elevation and, if applicable, the floodway for the proposed project site; or
    - (B) That the entire proposed project site has been removed from the special flood hazard area through submission of an approved Letter of Map Amendment or Letter of Map Revision.
  - (d) All authorized structural development occurring in special flood hazard areas where base flood elevations have not been developed shall be elevated consistent with the elevation standards for such structures in Zone AE special flood hazard areas. It is the applicant's responsibility to submit elevation documentation in accordance with section BCC 83.260 that accurately identifies the base flood elevation for the proposed site.
  - (e) All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) must meet the requirements of section BCC 83.520(1).
  - (f) The applicant shall derive base flood elevation data in accordance with standard engineering and FEMA practices for floodplain mapping and modeling to ensure alignment with "The Flood Insurance Study for Benton County, Oregon and Incorporated Areas". The County Engineer and the Federal Emergency Management Agency may provide technical assistance. The applicant shall provide for certification by an Oregon-licensed professional engineer or architect that the proposed development complies with provisions of this section.

## **VARIANCES**

**83.400 Variance Procedure.** The issuance of a variance to the requirements of this chapter is for floodplain management purposes only and may be granted pursuant to either BCC 83.410 or BCC 83.420, and subject to the notification requirement of BCC 83.430. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

**83.410 Minor Variance for Agricultural Structures.** A minor variance from elevation and floodproofing standards may be granted in limited circumstances for agricultural structures by means of a ministerial review, pursuant to subsections (1) through (5) below. In this section only, an “agricultural structure” is determined not by the definition in BCC 83.020 but instead by the provisions of subsection (3) below.

- (1) Establishment of new agricultural structures within a floodway is prohibited per section BCC 83.810(2); therefore, a variance shall not be issued for siting a new agricultural structure within any mapped regulatory floodway.
- (2) A variance shall not be issued for replacement or substantial improvement of an agricultural structure within any floodway if any increase in flood levels during the base flood discharge would result.
- (3) A variance for siting a new or replacement agricultural structure, or for substantial improvement of an existing agricultural structure, may be authorized pursuant to the following standards:
  - (a) The structure shall be a structure that requires a building permit.
  - (b) The structure will be a free-standing, detached structure.
  - (c) The structure will be used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock. For clarification:
    - (A) Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.
    - (B) Because agriculture is an industry and therefore farms are places of work, it is understood that entry into agricultural structures is necessary. The limitation that an agricultural structure be “used exclusively for agricultural purposes or uses” is satisfied when the principal use of an agricultural structure does not include occupation by people over extended periods of time (e.g., office or communal area for farm workers).
    - (C) For the purposes of this standard, the term “agricultural commodities” means agricultural goods, products, commodities, and livestock. Examples of agricultural commodities include, but are not limited to, harvested crops, aquaculture products, livestock, and animal products.
  - (d) No portion of the structure will be used for human habitation and or as a place of employment or entertainment. For clarification:
    - (A) Agricultural structures with multiple or mixed purposes, are not considered to be used exclusively for agricultural purposes and are, therefore, not agricultural structures for the purposes of this standard.
    - (B) Human habitation, such as a permanent or temporary residence or seasonal living quarters for workers, is not considered an agricultural purpose or use.
    - (C) Processing and production of agricultural commodities (outside of harvesting, storage, raising, or drying) are not considered agricultural purposes or uses.
    - (D) Examples of activities not considered to be exclusively for agricultural purposes or uses include activities such as distilling, brewing or fermenting beverages, baking or cooking, leather tanning, packaging, and similar production processes. Structures used for these types of processes are considered places of employment and are not eligible for a minor variance for an agricultural structure.
- (4) The applicant shall submit the following items along with an application form and fee:
  - (a) Although Benton County cannot require flood insurance, the applicant shall submit a signature from a licensed insurance professional verifying the applicant has discussed flood insurance



options and potential requirements for the proposed agricultural structure if a flood insurance policy were to be purchased for the structure;

- (b) Acknowledgement by the property owner that structure will be built with the lowest floor below the Base Flood Elevation, the structure will be wet flood-proofed, and that the contents of the structure might not be insurable against flood loss;
  - (c) Building plans showing:
    - (A) Flood-specific venting designed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood-specific venting in BCC 83.660;
    - (B) Flood damage-resistant construction materials for all portions of the structure that are below the Base Flood Elevation. Standards for flood damage-resistant construction materials are found in FEMA Technical Bulletin 2, Flood Damage- Resistant Materials Requirements for Buildings Located in special flood hazard areas in accordance with the National Flood Insurance Program (or successor document); and
    - (C) All electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be elevated in accordance with BCC 83.500(6);
  - (d) A pre-construction elevation certificate specific to proposed building site; and
  - (e) A site plan of the property clearly identifying the proposed building location.
- (5) Upon satisfactory completion of the items listed in subsections (3) and (4) above, the minor variance will be granted ministerially in conjunction with the issuance of the building permit and the owner shall sign the following declaratory statement to be recorded, along with a plot plan identifying the structure location and the dimensions of the structure, in the County Deed Records for the parcel or lot upon which the building is constructed:

*This property is situated within a flood hazard zone as shown on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency. Construction of an agricultural structure to be used only for agricultural use has been permitted by Benton County at an elevation below the base flood elevation for the site. Storage of hazardous chemicals, as defined in BCC 83.020, at an elevation below the base flood elevation within such structure is prohibited.*

*In consideration for not constructing the first floor of the structure above the base flood elevation, the owner agrees that the structure will be used exclusively for the purpose declared on the building permit, and that the structure will not be used for any other occupancy without obtaining the necessary building permits, which may require elevation of the structure, from Benton County to convert the occupancy.*

*This statement further serves as notice to the owner and successors in interest that this structure, regardless of size, may be required to be insured against flood loss and that contents of the structure may not be insurable against flood loss except as provided by the insurer.*

**83.420 Discretionary Variance.** In cases other than those listed in BCC 83.410, a variance may be granted pursuant to the standard variance procedure and criteria specified in Chapter 53 and the provisions of this section.

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, in conformance with the provisions of sections BCC 83.420(3) and (5), and BCC 83.430. As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (3) Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon:
  - (a) A showing of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
- (5) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of section BCC 83.420(2) through (4) are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (6) Upon consideration of the factors of subsections (1) through (5) above and the purposes of this chapter, the Planning Official may attach such conditions to the granting of a variance as deemed necessary to further the purposes of this ordinance. Conditions of approval may be imposed to reduce or mitigate flood hazard conditions or to otherwise ensure compliance with the purpose and provisions of this chapter and may address, but are not limited to:
  - (a) The danger that materials may be swept onto other lands to the injury of others;
  - (b) The danger to life and property due to flooding or erosion damage;
  - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) The importance of the services provided by the proposed facility to the community;
  - (e) The necessity to the facility of a waterfront location, where applicable;
  - (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - (g) The compatibility of the proposed use with existing and anticipated development;
  - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
  - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

#### **83.430 Variance Notification.**

- (1) Any applicant to whom a variance from the elevation standard is granted shall be given written notice that:
  - (a) The issuance of a variance to construct a structure with the lowest floor below the Base Flood Elevation will result in increased premium rates for flood insurance; and
  - (b) Such construction below the base flood elevation increases risks to life and property.

- (2) Such notification and a record of all variance actions, including justification for their issuance shall be maintained in accordance with BCC 83.260.

## **PROVISIONS FOR FLOOD HAZARD REDUCTION**

### **83.500 General Floodplain Development Standards.**

The following standards shall apply in all special flood hazard areas:

- (1) **Alteration of Watercourses.** The flood carrying capacity within the altered or relocated portion of a watercourse shall be maintained pursuant to the standards identified in section BCC 83.230(2).
- (2) **Structures Located In Multiple Or Partial Flood Zones.** In coordination with the State of Oregon Specialty Codes:
  - (a) When a structure is located in multiple flood zones on the community's Flood Insurance Rate Maps (FIRM) the provisions for the more restrictive flood zone shall apply.
  - (b) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (3) **CRITICAL FACILITIES.** Construction of new critical facilities shall be, to the extent possible, to the extent possible, located outside the limits of the special flood hazard area (SFHA). Construction of new critical facilities shall be permissible within the SFHA only if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three (3) feet above the Base Flood Elevation (BFE) or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility shall also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated, to the extent possible, to or above the level of the BFE shall be provided to all critical facilities.
- (4) **ANCHORING**
  - (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - (b) All manufactured dwellings shall be anchored per BCC 83.620(4).
- (5) **CONSTRUCTION MATERIALS AND METHODS.** All new construction and substantial improvements shall be constructed:
  - (a) With materials and utility equipment resistant to flood damage; and
  - (b) Using methods and practices that minimize flood damage.
- (6) **UTILITIES AND EQUIPMENT**
  - (a) Electrical, Mechanical, Plumbing, And Other Equipment shall comply with the following:
    - (A) All new electrical, heating, ventilation, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated a minimum of one (1) foot above the Base Flood Elevation (BFE).
    - (B) All electrical, heating, ventilation, air-conditioning, plumbing, duct systems, and other equipment and service facilities that are installed or replaced as part of a substantial improvement shall be elevated a minimum of one (1) foot above the Base Flood Elevation (BFE).
  - (b) Exceptions are allowed for the following situations:
    - (A) Electrical, heating, ventilation, air-conditioning, plumbing, duct systems, and other equipment and service facilities serving a structure constructed prior to August 5,

1986, and not substantially improved since that date, and not part of a current substantial improvement, may be installed at the same elevation as the top of the lowest habitable floor. (A basement shall not be considered a habitable floor for this purposes of this exception.)

Note: It is still strongly recommended that all such items be elevated a minimum of one (1) foot above the BFE whenever possible.

- (B) Electrical systems, equipment and components; heating, ventilation, and air-conditioning; plumbing appliances and plumbing fixtures; duct systems; and other service equipment that are specially designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to an elevation that is at least one (1) foot above the BFE.
- (7) Water supply, sanitary sewer, and on-site waste disposal systems shall comply with the following:
- (a) All new and replacement water supply and sanitary sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters.
  - (b) On-site wastewater treatment systems shall be located outside of the special flood hazard area (SFHA) on properties where land outside the SFHA is comparable to or better than land located within the SFHA with regard to soil conditions, topography, and unencumbered area in accordance with the Oregon Department of Environmental Quality rules
  - (c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.
- (8) TANKS
- (a) Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.
  - (b) Above-ground tanks shall be installed a minimum of one (1) foot above the Base Flood Elevation (BFE) or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.

### **83.520 Land Division and Property Line Adjustments.**

#### **(1) MAJOR DEVELOPMENT PROPOSALS**

- (a) Where the primary zone permits a subdivision, mobile home or manufactured dwelling park, or mobile home or manufactured dwelling subdivision, such use may be allowed in the Floodplain Management Overlay Zone if:
  - (A) Such use is consistent with the need to minimize flood damage;
  - (B) The applicant demonstrates that public utilities and facilities such as water supply, sewage disposal, natural gas and electrical systems are located and constructed to minimize flood damage; and
  - (C) The applicant demonstrates that adequate drainage has been provided to reduce exposure to flood damage.
- (b) Where base flood elevation data have not been provided by FEMA or are not available from another authoritative source, the applicant shall provide such data if the proposed subdivision or park equals or exceeds fifty (50) lots or parcels or if it exceeds five (5) acres. Such data shall be derived in accordance with standard engineering and FEMA practices for floodplain

mapping and modeling to ensure alignment with "The Flood Insurance Study for Benton County, Oregon and Incorporated Areas".

(c) Subdivisions shall also be subject to the provisions of BCC 83.520(2).

(2) **PARCEL AND LOT DESIGN STANDARDS.** Parcels or lots resulting from subdivisions, partitions, and property line adjustments of land in the Floodplain Management Overlay Zone shall comply with the requirements of this section.

(a) Parcels and lots shall be designed such that existing and future uses and development activities allowed by the underlying zone can be carried out in conformance with the regulations contained in this chapter. Creation of lots or parcels that do not meet this requirement is prohibited, with the exception of lots or parcels created for public park or open space purposes.

(b) For each lot or parcel, other than those designated for non-residential use (such as a parcel in a resource zone and containing no dwelling right), open space use, or designated as otherwise unbuildable, the applicant shall:

(A) Demonstrate a proposed building site for the primary structure that is:

(i) Located entirely outside the floodplain;

(ii) At least 10,000 square feet in size; and

(iii) No less than 50 feet in any dimension.

(B) Sign for recording a deed restriction acknowledging that the primary structure must be sited outside the floodplain.

(c) For each parcel or lot designated for non-residential use (such as a parcel in a resource zone and containing no dwelling right), open space use, or designated as otherwise unbuildable, the applicant shall either:

(A) Comply with the standards of subsection (b); or

(B) Sign for recording a deed restriction acknowledging that any primary structure established on the parcel or lot must be sited on land that is outside the floodplain.

(d) Site feasibility approval areas for on-site wastewater treatment systems shall be located outside of the floodplain to the extent possible and in accordance with the Oregon Department of Environmental Quality rules. In no instance shall a site feasibility approval area for initial and repair systems reduce the area identified for compliance with subsection (b) or subsection (c) to less than 5,000 square feet and 40 feet in any dimension; in such case a different location for on-site wastewater disposal shall gain approval or the area designated for the building site shall be modified to meet these minimums.

(e) The applicant shall submit a profile identifying the existing natural grade and the Base Flood Elevations (BFE) along the entire length of the proposed access route(s), from the right-of-way to the proposed building site identified for subsection (b) or subsection (c), for each resultant parcel or lot. The profile shall be prepared by an Oregon-registered Professional Land Surveyor or an Oregon-licensed Civil Engineer and submitted with the application for land division.

(A) If any portion of the existing natural grade of the proposed access route(s) is lower than the BFE:

(i) The property owner shall sign for recording a deed restriction acknowledging that during a flood event the ability to evacuate the property or for emergency vehicles to obtain access to the property to provide emergency services may be prevented or made hazardous.

(ii) The property owner is encouraged to provide a copy of the profile to the local

fire district and discuss the potential for impaired access and emergency services during flood conditions.

- (f) If more than one covenant is required for compliance with the subsections above or if a covenant is required for more than one resultant parcel or lot, each covenant shall be recorded as a separate document.

## **CONSTRUCTION STANDARDS**

### **83.600 Specific Construction Standards for Flood Zones.**

The specific standards in BCC 83.610 through BCC 83.680 shall apply to all new construction and substantial improvements in Zones A, AE, AH, and A1-A30, in addition to the General Standards contained in BCC 83.500 through BCC 83.520 of this ordinance.

#### **83.610 Non-residential Construction.**

- (1) New or expanded primary commercial, industrial, and other non-residential structures, other than agricultural structures, are prohibited within the floodplain. If there is insufficient buildable land outside the floodplain to allow reasonable development of the property, a new or expanded primary structure may be authorized through the procedure specified in BCC 83.620(3).
- (2) Where allowed, new construction, conversion to, and substantial improvement of any commercial, industrial, or other non-residential structure, other than agricultural structures, shall either:
  - (a) Have the lowest floor, including basement, elevated a minimum of 18 inches above the Base Flood Elevation (BFE); or,
  - (b) Together with attendant utility and sanitary facilities:
    - (A) Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - (B) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
    - (C) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this section based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the Floodplain Administrator as set forth BCC 83.260.
  - (c) Non-residential structures that are elevated, not floodproofed, and have an enclosed area below the lowest floor shall comply with the standards for enclosed areas in section BCC 83.660.
  - (d) An applicant choosing to floodproof a non-residential structure pursuant to the standards of this section shall be notified in writing that flood insurance premiums may be based on rates that are one (1) foot below the floodproofed level (e.g. a building floodproofed to the base flood elevation will be rated as one (1) foot below that level).

#### **83.620 Residential Construction.**

- (1) Where allowed, new construction, conversion to, and substantial improvement of any residential structure (as defined in BCC 83.020) shall have the lowest floor, including basement, elevated a minimum of 18 inches above the Base Flood Elevation (BFE).
- (2) Where allowed, enclosed areas below the lowest floor shall be constructed with flood-specific venting (as defined in BCC 83.020) that complies with BCC 83.660.
- (3) New dwellings, expansion of existing dwellings, and placement of manufactured dwellings are prohibited within the floodplain, with the following exceptions:

- (a) New dwellings on vacant land (as defined in BCC 83.020) may be allowed if, through an Administrative Review the Planning Official determines that there is insufficient buildable land outside the floodplain to allow reasonable development of the property. The Planning Official may then allow a building site located partially or fully within the floodplain.
  - (A) In approving such a site, preference shall be given to sites that:
    - (i) Result in less fill and development within the floodplain;
    - (ii) Are of higher elevation;
    - (iii) Are farther from the top of bank of the adjacent water course
    - (iv) Minimize the risk of structural damage from flooding; and
    - (v) Preserve natural floodplain functions.
  - (B) In addition to the construction standards of this chapter, further conditions may be applied as deemed necessary by the Planning Official to minimize potential risks to the structure and potential impacts to other properties and the functioning of the floodplain.
- (b) Additions to existing dwellings may be allowed if the addition either:
  - (A) Falls below the threshold of “substantial improvement”; or
  - (B) Will not result in the filling of additional floodway fringe area (such as a second story addition or a lateral addition elevated on flow-through construction).
- (c) Replacement of an existing dwelling may be allowed:
  - (A) Within the building footprint of the dwelling being replaced;
  - (B) With a maximum 10% expansion or shift of the building footprint of the dwelling being replaced;
  - (C) With a maximum 10% expansion located elsewhere on the site, if through an Administrative Review the Planning Official determines that the relocation of the dwelling enhances stormwater and floodplain functions. The relocation shall be considered to enhance stormwater and floodplain functions if it furthers any of the following goals without worsening any other goal:
    - (i) Replaces standard construction with flow-through construction as defined in BCC 83.020;
    - (ii) Moves the dwelling to a higher ground elevation;
    - (iii) Moves the dwelling further from the top of bank of the adjacent water course;
    - (iv) Reduces the amount of impervious surface area in the floodway fringe;
    - (v) Does not negatively impact non-noxious riparian vegetation. Noxious vegetation is identified in the Oregon Department of Agriculture’s Oregon Weed Policy and Classification System (Appendix 1) or successor document, including weeds designated as “A,” “B,” and/or “T” ; or
  - (D) With a greater than 10% expansion or shift of the building footprint of the dwelling being replaced if:
    - (i) The dwelling will be constructed with flow-through construction as defined in BCC 83.020;
    - (ii) The dwelling will be no closer to the top of bank of the adjacent water course than the existing structure; and

- (iii) The expansion or shift of the building footprint does not negatively impact non-noxious riparian vegetation. Noxious vegetation is identified in the Oregon Department of Agriculture's Oregon Weed Policy and Classification System (Appendix 1) or successor document, including weeds designated as "A," "B," and/or "T".

(4) **MANUFACTURED DWELLINGS.** In addition to the standards of subsections (1) through (3) above, the following shall apply to all new and replacement manufactured dwellings, as well as substantially improved manufactured dwellings:

- (a) The bottom of the longitudinal chassis frame beam shall be elevated to or above the Base Flood Elevation (BFE);
- (b) Such dwelling shall be anchored to prevent flotation, collapse, and lateral movement during the base flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques); and
- (c) Electrical crossover connections shall be elevated a minimum of one (1) foot above the Base Flood Elevation (BFE).

### **83.630 Recreational Vehicles.**

- (1) A recreational vehicle placed within the A, AE, AH, and A1-30 Flood Zones shall:
  - (a) Be on the site for fewer than 180 consecutive days; and
  - (b) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached addition; or
  - (c) Meet the requirements of BCC 83.620, including requirements for anchoring and elevation, for manufactured dwellings.

### **83.640 Garages.**

- (1) Attached garages may be constructed with the garage floor slab below the base flood elevation (BFE) in special flood hazard areas, if the following requirements are met:
  - (a) Garages located partially or entirely within the floodway must comply with the requirements of BCC 83.810;
  - (b) The garage is used solely for parking, building access, and/or storage;
  - (c) The garage floor elevation is at or above grade along the length of at least one side;
  - (d) The garage is constructed with flood-specific venting (as defined in section BCC 83.020) in compliance with BCC 83.660 to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters;
  - (e) The portions of the garage constructed below the BFE are constructed with materials resistant to flood damage as defined in FEMA technical guidance documentation;
  - (f) The garage is constructed in compliance with the provisions of BCC 83.500(4) and (5); and
  - (g) The garage is constructed with electrical, mechanical, and other service facilities located and installed consistent with the provisions of BCC 83.500(6).
- (2) Detached garages shall be constructed in compliance with the standards for accessory structures in BCC 83.650 or non-residential structures in BCC 83.610, depending on the square footage of the garage.



### 83.650 Accessory Structures.

- (1) Accessory structures located partially or entirely within the floodway must comply with the requirements of BCC 83.810.
- (2) Where allowed, new construction, conversion to, and substantial improvement of any accessory structure shall have the lowest floor, including basement, elevated a minimum of 18 inches above the Base Flood Elevation (BFE).
- (3) Where allowed, enclosed areas below the lowest floor shall be constructed with flood-specific venting (as defined in section BCC 83.020) that complies with section BCC 83.660.
- (4) Relief from elevation requirements of subsection (2) above may be granted for accessory structures that meet all of the following requirements:
  - (a) Shall be located on the same parcel or lot as a principal structure;
  - (b) Shall only be used for parking, access, and/or storage and shall not have any portion of the structure used for human habitation;
  - (c) Shall be limited to one-story with a maximum building footprint of 600 square feet;
  - (d) The portions of the accessory structure located below the Base Flood Elevation shall be built using flood resistant materials;
  - (e) Shall be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood;
  - (f) Shall be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood-specific venting in BCC 83.660;
  - (g) Shall be located and constructed to have low damage potential;
  - (h) Shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with BCC 83.500(8); and
  - (i) Shall be constructed with electrical, mechanical, and other service facilities located and installed consistent with the provisions of BCC 83.500(8).
- (5) For any accessory structure relief granted under subsection (4) above, the owner shall sign the following declaratory statement to be recorded, along with a plot plan identifying the structure, in the County Deed Records for the parcel or lot upon which the building is constructed:

*This property is situated within a flood hazard zone as shown on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency. Construction of the \_\_\_\_\_ [specify type of accessory structure, i.e. detached garage, storage shed] to be used only for \_\_\_\_\_ [specify type of use, i.e. parking, access, limited storage] has been permitted by Benton County at an elevation below the base flood elevation for the site. Storage of hazardous chemicals, as defined in BCC 83.020, at an elevation below the base flood elevation within such structure is prohibited.*

*In consideration for not constructing the first floor of the structure above the base flood elevation, the owner agrees that the structure will be used exclusively for the purpose declared on the building permit, and that the structure will not be used for any other occupancy without obtaining the necessary building permits, which may require elevation of the structure, from Benton County to convert the occupancy.*

*This statement further serves as notice to the owner and successors in interest that this structure, regardless of size, may be required to be insured against flood loss and that contents of the structure may not be insurable against flood loss except as provided by the insurer.*

### **83.660 Enclosed Areas Below a Structure.**

- (1) Fully enclosed areas below the lowest floor (excluding basements) of new and substantially improved structures in the Floodplain Management Overlay Zone are prohibited, or shall be designed to comply with the following requirements:
  - (a) Designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters;
  - (b) Used solely for parking, storage, or building access;
  - (c) Contain openings that meet or exceed the definition of flood-specific venting identified in section BCC 83.020, or are certified by an Oregon-registered professional engineer or architect; and
  - (d) Comply with all additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 shall be complied with when applicable.

### **83.670 Below-grade Crawlspace.**

- (1) Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, Crawlspace Construction for Buildings Located in special flood hazard areas, or successor document. (For more detailed information refer to FEMA Technical Bulletin 11-01.):
  - (a) The building shall be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required flood openings stated in subsection (b) below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as an Oregon registered professional engineer or architect. Other types of foundations are recommended for these areas.
  - (b) The crawlspace is an enclosed area below the Base Flood Elevation (BFE) and, as such, shall have flood-specific venting (as that term is defined in BCC 83.020) that are compliant with BCC 83.660 that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood-specific vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.
  - (c) Portions of the building below the BFE shall be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.
  - (d) Any building utility systems within the crawlspace shall be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
  - (e) The interior grade of a crawlspace below the BFE shall not be more than two (2) feet below the lowest adjacent exterior grade.
  - (f) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall shall not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas. Additionally, the height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the lowest habitable floor shall not exceed five (5) feet at any point.

- (g) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.
- (h) If the velocity of floodwaters at the site will exceed five (5) feet per second, other foundation types shall be used.

**83.680 Standards for Shallow Flooding Areas.**

- (1) Shallow flooding areas appear on FIRMs as AH zones with Base Flood Elevations. For AH zones, adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.
- (2) Development within AH Zones must comply with the standards in sections 5.1, 5.2, and 5.2.5.

**CORVALLIS URBAN FRINGE**

**83.700 Additional Standards in the Corvallis Urban Fringe.** In the Floodplain Management Overlay Zone within the Corvallis Urban Fringe, the following standards shall apply in addition to other applicable provisions of this chapter. In the case of conflict, the more restrictive standard shall apply. Developers of floodplain property are strongly encouraged to schedule a pre-application conference with the Community Development Department to review floodplain considerations.

- (1) Any proposed alteration or relocation of a watercourse within the Corvallis Urban Fringe shall comply with the standards identified in BCC 83.230(2).
- (2) In areas identified on the Benton County Zoning Map as Partial-Protection Floodplain, the following shall apply:
  - (a) Fill or construction in the floodplain shall be compensated for by removal of an equal amount of material from the floodplain on the same property. The purpose is to ensure that the available flood volume of the special flood hazard area (100-year floodplain) is not reduced. Volumetric exchange will not be required of buildings constructed with flow-through design. Areas of fill and excavation shall be designed to accommodate floodwaters flows and shall not create barriers to the flow of floodwaters. Proposals to alter topography in the floodplain must demonstrate that they will not result in alteration of hydrology or flow regimes that would cause erosion, unwanted ponding, or other problems.
- (3) In areas identified on the Benton County Zoning Map as High-Protection Floodplain, the following shall apply:
  - (a) Removal of vegetation from the floodplain is prohibited, except for the following purposes:
    - (A) Removal of a hazard tree which poses an immediate threat to life or property. Tree removal shall comply with the following standards:
      - (i) The stump and root wad of any altered tree shall remain undisturbed in place;
      - (ii) Any tree removed is required to be replaced by like native species or alternate approved native species.
    - (B) Maintenance of lawns, planted vegetation, and landscaping, to the extent existing on October 6, 2005.
    - (C) Stream restoration and enhancement programs approved by the Oregon Department of Fish and Wildlife as improving riparian function, and wetland restoration and enhancement programs approved by Oregon Department of State Lands or the Oregon Department of Fish and Wildlife.

- (D) Removal of non-native, invasive, and/or noxious vegetation, as identified in the Oregon Department of Agriculture’s Oregon Weed Policy and Classification System (Appendix 1) or successor document, including weeds designated as “A”, “B”, and/or “T”. As necessary to control erosion, areas of vegetation removal shall be re-vegetated with native species. If necessary to prevent erosion prior to new vegetation becoming established, short-term, non-structural erosion control measures shall be employed;
  - (E) Substitution of native plant species for non-native plants. Additionally, native plants may be planted without accompanying removal of non-native plants. All new plantings shall be species listed on the City of Corvallis Native Plant List as appropriate for the proposed location. Plantings being substituted for non-native plants shall be species identified on the Corvallis Native Plant List as being in the same ecological-function category as the replaced plants. Plantings shall be maintained to ensure they become established.
  - (F) For the development of water-related or water-dependent uses, provided they are designed and constructed to minimize impact on the floodplain;
  - (G) Removal of emergent in-channel vegetation likely to cause flooding events that result in structural damage;
  - (H) The minimum vegetation removal necessary to establish and maintain a fire fuel-break safety zone, as defined in BCC 88.010(2), surrounding a structure. Benton County encourages property owners to consult with the Oregon Department of Fish and Wildlife on ways to minimize the impact of this vegetation removal and to mitigate the impacts that do occur.
  - (I) Continuation of agricultural activities, limited to areas that have been converted to farm use prior to October 6, 2005. The property owner shall have the burden of proof in demonstrating that an area was converted prior to this date.
  - (J) The minimum vegetation removal necessary to establish a pedestrian trail located at least 10 feet inland from the top of bank.
  - (K) Vegetation removal in conjunction with a development activity allowed under BCC 83.700(3)(b).
  - (L) Commercial forestry operations authorized by the Oregon Department of Forestry.
  - (M) Vegetation removal within the area authorized under the provisions for a Modification to Natural Features Standards (BCC 88.800).
- (b) Building, Paving, and Grading Activities:
- (A) In the 0.2-ft. Floodway portion of the Floodplain Management Overlay Zone within the Corvallis Urban Fringe, no encroachments, including fill, new construction, substantial improvements, and other development are allowed, with the exception of bridges, infrastructure, utilities, or water dependent uses for which it may be demonstrated, through hydrologic and hydraulic analyses performed in accordance with standard engineering practices, that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge. Such exceptions shall also be designed and constructed to minimize adverse impacts to stormwater and floodplain functions within the floodway fringe, and comply with all applicable mandatory construction standards. Development within the 0.2-ft. Floodway shall comply with all applicable State and Federal requirements.
  - (B) In the Floodway Fringe portion of the Floodplain Management Overlay Zone within the Corvallis Urban Fringe, the placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, is prohibited except as provided

below. Such exceptions shall be designed and constructed to minimize adverse impacts to stormwater and floodplain functions within the floodway fringe, and comply with all applicable mandatory construction standards.

- (i) Replacement of an existing structure may be allowed pursuant to BCC 83.620(3).
- (ii) Additions to an existing structure may be allowed pursuant to BCC 83.620(3).
- (iii) Accessory structures and agricultural structures, provided they are of flow-through design and construction.
- (iv) Grading and excavation that are standard agricultural practices of a reoccurring character, limited to areas that have been converted to farm use prior to October 6, 2005. The property owner shall have the burden of proof in demonstrating that an area was converted prior to this date.
- (v) The following types of infrastructure, provided they are designed to minimize impacts to floodplain hydrologic and ecologic function:
  - (a) Construction of streets, roads, public utilities, bridges, and bicycle and pedestrian ways that are included in the City of Corvallis Transportation Plan, or in other adopted City infrastructure/utility plans.
  - (b) Construction of streets, roads, bridges and bicycle and pedestrian ways necessary in order to maintain an acceptable functional classification of roadways adjacent to the property.
  - (c) Driveways necessary to provide access to an approved building site, provided the minimum floodplain area is disturbed.
- (vi) Development of water-related and water-dependent uses;
- (vii) Erosion control or flood control measures that have been approved by the Oregon Department of State Lands (DSL) and/or the U.S. Army Corps of Engineers, and that utilize bio-engineering methods. Streambank hardening (installation of hard- surfaced erosion- or flood-protection structures such as rip-rap) is prohibited except where necessary to address an imminent hazard to a structure built prior to October 6, 2005. Where allowed, hard-surface measures shall be designed by a Professional Engineer licensed by the State of Oregon and shall be approved by the Oregon Department of State Lands or U.S. Army Corps of Engineers, and shall at a minimum, require backfilling with soil and planting with native vegetation;
- (viii) Development authorized under the provisions for Modification to Natural Features Standards (BCC 88.800).

## **FLOODWAYS**

### **83.800 Regulatory Floodway Not Mapped.**

- (1) In areas where a regulatory floodway has not been designated, no new construction, substantial improvement, or other development (including fill) shall be permitted within Zones AE and A1-30 on the Benton County Flood Insurance Rate Map (FIRM), unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

- (2) Encroachments that would result in an increase of more than one (1) foot in base flood elevations for projects in areas that do not have a mapped floodway may be authorized provided that the applicant:
  - (a) Receives approval for a Conditional Letter of Map Revision (CLOMR) from the Federal Insurance Administrator for the proposed encroachment which ensures that the requirements for such revision, as established under Volume 44 of the Code of Federal Regulations, section 65.12, are fulfilled; and
  - (b) Submits the approved CLOMR to the Floodplain Administrator.

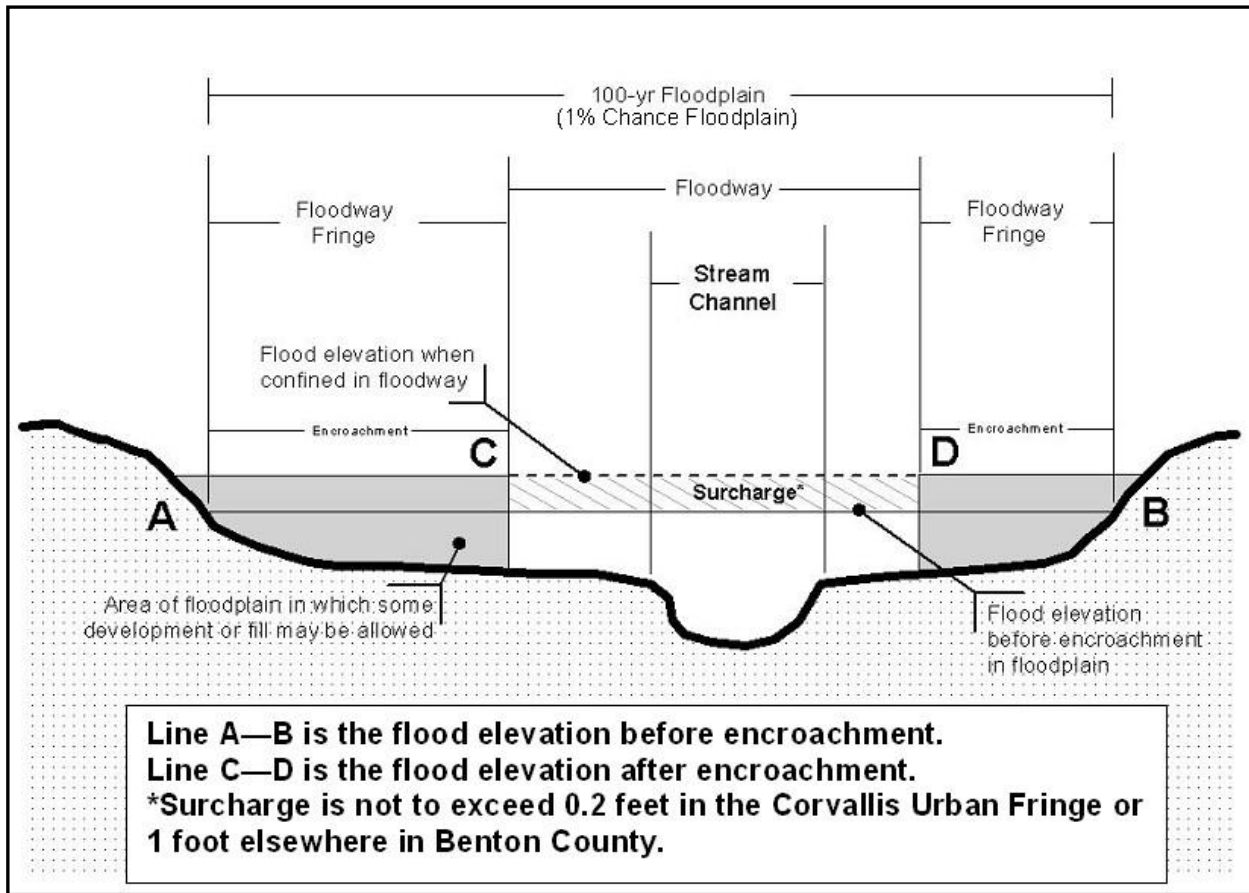
**83.810 Mapped Regulatory Floodway.** Floodways are extremely hazardous areas due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential; therefore, if any portion of the proposed development is located in a designated floodway, the following provisions apply.

- (1) Encroachments which include fill, new construction, substantial improvements and other development within the adopted regulatory floodway are prohibited unless certification by an Oregon-licensed Civil Engineer is provided demonstrating, through hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (2) Agricultural structures and structures accessory to a dwelling are prohibited within the adopted regulatory floodway.
- (3) Within a floodway in the Corvallis Urban Growth Boundary as described in BCC 83.110(3), structural improvements and the placement of fill, other than in a public benefit such as a public improvement project, shall not be permitted. For the purposes of this section, public improvement projects include, but are not limited to, the construction of bridges, roads, storm water detention facilities, and water dependent uses. Public improvement projects are allowed if the applicant demonstrates, through hydrologic and hydraulic analyses, prepared by an Oregon-licensed professional engineer, that the permitted development will not result in any increase in flood levels during the occurrence of the base flood discharge.
- (4) Encroachments (for development of land outside of the Corvallis Urban Growth Boundary) within the adopted regulatory floodway that would result in an increase in base flood elevations for projects in a mapped floodway may be authorized provided that the applicant:
  - (a) Receives approval for a Conditional Letter of Map Revision (CLOMR) from the Federal Insurance Administrator for the proposed encroachment which ensures that the requirements for such revision, as established under Volume 44 of the Code of Federal Regulations, section 65.12, are fulfilled; and
  - (b) Submits the approved CLOMR to the Floodplain Administrator.
- (5) If all of the above applicable requirements are satisfied, all new construction, substantial improvements, and other development shall also comply with all other applicable provisions of this chapter.
- (6) New and replacement fences and free-standing walls (as identified in the table below) may be allowed within the adopted regulatory floodway as follows:
  - (a) Construction Types A and B may be allowed without a no-rise analysis.
  - (b) Construction Type C may be allowed without a no-rise analysis and upon submission of engineering calculations demonstrating that it will collapse under anticipated base flood conditions.
  - (c) Construction Types D through H may be allowed upon submission of a no-rise analysis, prepared using FEMA-approved engineering and modeling standards, documenting that the

proposed fence or free-standing wall will not create an increase to the Base Flood Elevation.

<b>Fencing Construction Types</b>	
<b>Construction Type</b>	<b>Description</b>
A	Open barb or barb less wire. Open means no more than one horizontal strand per foot of height.
B	Open pipe or rail fencing (e.g. corrals). Open means rails occupy less than 10% of the fence area and posts are spaced no closer than 8 feet apart.
C	Collapsible fencing that will collapse under anticipated base flood conditions. Debris impact must be considered.
D	Other wire, pipe, or mil fencing (e.g. field fence, chicken wire, etc.) which does not meet open requirements above.
E	Chain link fencing
F	Continuous wood fencing
G	Masonry walls
H	Retaining walls, bulkheads

Note: Wire fences within the floodway are encouraged to be wire-strand construction rather than woven-wire, welded-wire, or solid construction. Wire-strand construction reduces the potential for the fence to collect debris during a flood, redirect floodwaters, and/or be washed downstream.





# Chapter 84

## Greenway Management Overlay (/GM)

### 84.005 Purpose.

(1) The Greenway Management Overlay Zone shall protect the natural, scenic, and recreational qualities of lands along the Willamette River in Benton County, and implement the goals and policies of the State of Oregon's Willamette River Greenway Program.

(2) Nothing in this chapter is intended to authorize public use of private property. Public use of private property is a trespass violation unless owner permission is given in a particular situation, or appropriate easements and access have been acquired in accordance with applicable laws. [Ord 26, Ord 90-0069]

**84.010 Application.** The Greenway Management Overlay Zone is applied to lands along the Willamette River identified on the Oregon State Highway Division Willamette River Greenway Maps on file at the Development Department, 180 N.W. 5th Street, Corvallis, which maps are incorporated by reference into this code. [Ord 26, Ord 90-0069]

*[[The Community Development Department is no longer located at the above referenced address. This statement is for clarification only, and is not part of Benton County Code.]]*

### PERMITTED USES

**84.105 Permitted Uses.** The following uses are allowed in the Greenway Management Overlay Zone:

- (1) Existing gravel extraction operations operating under permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or Division of State Lands (DSL).
- (2) Signs, markers, aids, etc., placed by a public agency on public lands to serve the public, or signs on private lands no larger than one and one half square feet to identify private property.
- (3) Activities to protect, conserve, enhance and maintain public scenic, historical and natural uses on public lands.
- (4) Recreational development including minor land alterations for drainage, portable chemical toilets, fire rings, fencing, signing, walking trails on State-owned lands and parks and other recreational facilities as designated in the Comprehensive Plan. More intensive recreational development requests shall be reviewed by the County Parks Board and by the Planning Official.
- (5) Erosion control operations not requiring a permit from the Division of State Lands.
- (6) Farm use.
- (7) The cutting of timber for public safety, erosion control, or personal noncommercial use.
- (8) Reasonable emergency procedures necessary to protect an existing use or facility for the safety or protection of property.
- (9) Maintenance and repair of an existing use or improvement.
- (10) Landscaping, construction of driveways, modifications of existing structures, and the construction or placement of accessory structures or facilities commonly provided in conjunction with existing improvements. Other legally existing uses, provided, however, that any change or intensification of such use shall require review as provided by this chapter. [Ord 26, Ord 90-0069]

## CONDITIONAL USES

**84.305 Conditional Uses.** The following uses may be allowed in the Greenway Management Overlay Zone by conditional use permit approved by the Planning Official:

- (1) All permitted uses in the primary zone which are not permitted in the Greenway Management Overlay Zone.
- (2) Boat moorage.
- (3) Water intake and utilities not associated with a farm use, dwelling, or manufactured dwelling.
- (4) Facilities for the purpose of generating power for private or public use.
- (5) Dwelling.
- (6) Operations conducted or the exploration, mining, and processing of geothermal resources, aggregate, and other mineral resources or other subsurface resources. [Ord 26, Ord 90-0069]

**84.310 Notice of Application for Conditional Use Permit.** The Oregon Department of Fish and Wildlife, and the Parks and Recreation Division of the Oregon Department of Transportation shall be given notice by certified mail within two (2) days of receipt of an application for a conditional use permit in the Greenway Management Overlay Zone. Both agencies shall also be notified of the final decision taken by the County on such applications. [Ord 26, Ord 90-0069]

**84.315 Conditional Use Criteria.** The decision to approve a conditional use permit in the Greenway Management Overlay Zone shall be based on the following criteria as applicable. The proposed use shall:

- (1) Preserve and maintain existing agricultural lands for farm use.
- (2) Protect significant fish and wildlife habitats.
- (3) Protect and enhance significant natural and scenic areas, viewpoints and vistas.
- (4) Protect, restore, or enhance areas of ecological, scientific, historical, or archaeological significance.
- (5) Maintain or enhance the quality of the air and water in and adjacent to the river.
- (6) Retain in their natural state areas of annual flooding (the two and ten year flood plains), water areas, and wetlands to the maximum possible extent. Areas subject to the base flood level shall be retained in open space uses.
- (7) Maintain the natural vegetative fringe by all means practicable to assure scenic quality, protection of wildlife, protection from erosion, and screening of uses from the river.
- (8) Be compatible with the site, the surrounding area and the environment.
- (9) Protect areas which have erosion potential by means compatible with the natural character of the Greenway.
- (10) Satisfy recreational needs by public and private means in a manner consistent with the natural limitations of the land, and minimize conflicts with adjacent land uses.
- (11) Provide public safety and protection of public and private property, especially from vandalism and trespass.
- (12) Provide the maximum possible open space, natural vegetation, or landscaped area between the activity and the river.
- (13) Provide public access to and along the river including pedestrian, bicycle, and water-related uses as necessary to implement the Greenway Plan within urbanizing areas.
- (14) Meet applicable criteria for the review of boat moorage set forth by the Parks and Recreation Division of the Oregon Department of Transportation. [Ord 26, Ord 90-0069]

**84.320 Aggregate Extraction in the Greenway.** In addition to complying with the requirements of BCC 84.315, conditional use permits for extraction of known aggregate deposits shall demonstrate that such operations will be conducted in a manner designed to minimize adverse effects on prime agricultural soils, water quality, fish and wildlife, recreation areas, vegetation, bank stability, stream flow, visual quality, and public safety, and to guarantee necessary reclamation for approved subsequent use. Mining of point bars is considered an effective method of minimizing bank erosion. [Ord 26, Ord 90-0069]

**84.405 Siting Standards.** All structures allowed in the Greenway Management Overlay Zone shall be sited in compliance with the standards of the primary zone, BCC Chapter 99, and the following additional standards:

- (1) No structure or use shall be placed in a manner likely to cause contamination of a stream, lake or other body of water as established by the Oregon Department of Environmental Quality.
- (2) A structure which is not a water dependent use shall not be placed closer than 75 feet of the ordinary high water line of any stream or river. [Ord 26, Ord 90-0069]

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# Chapter 85

## Flexible Industrial Overlay (/FI)

**85.005 Purpose.** The Flexible Industrial Overlay Zone shall ensure the orderly industrial development of six specific parcels or lots situated within the Corvallis Urban Growth Boundary. [Ord 26J, Ord 90-0069, Ord 96-0118]

**85.010 Definitions.**

- (1) "Parent parcel" means a parcel or lot as described and recorded in County Deed Records on or before September 20, 1978.

[Ord 2006-0214]

**85.105 Development Options.**

- (1) The property owner may choose either one or a combination of the following options:
  - (a) One use per ten acre parcel or lot created from each parent parcel. The minimum parcel or lot size for this option is ten acres.
  - (b) Parcels or lots of less than ten acres shall be contiguous. One use per parcel or lot shall be permitted.
- (2) The total number of parcels or lots allowed per parent parcel is shown below. Subsequent division of the parent parcel in excess of the total shown below shall not occur prior to annexation:

<u>Parent Parcel Number*</u>	<u>Number of Parcels or Lots Acreage</u>	<u>Per Parent Parcel</u>
16	23	2
22	45	4
24	65	6
25	57	5
26	54	5
27	57	5

\*These parent parcels are identified in the "Corvallis Area Industrial Land Report", January 1982, OD4COG, on file in the office of the Benton County Community Development Department, , Corvallis, which report is incorporated by reference into this code. [Ord 26J, Ord 90-0069, Ord 96-0118, Ord 2006- 0214]

**85.205 Permitted Uses.** The following uses are permitted in the Flexible Industrial Overlay Zone:

- (1) Light industrial uses:
  - (a) Production, processing, assembling, packaging, or treatment of food products from previously processed materials.
  - (b) Production, processing, assembling, and packaging of finished products from previously prepared materials.
  - (c) Manufacturing and assembling of electronic instruments and equipment and electrical devices.
- (2) Commercial uses: animal sales and services (commercial kennels, veterinary), automobiles and equipment repairs (heavy, light, and farm equipment), wholesaling, storage and distribution (light).
- (3) Agricultural uses: horticulture (cultivation, storage), packing and processing (limited).
- (4) Permitted accessory uses. One dwelling or manufactured dwelling shall be permitted per development

site and shall be developed simultaneously with or following development of primary and accessory uses. Such dwelling or manufactured dwelling shall be arranged and related to the principal use and located for principal services to the employees or users of one or more of the primary uses on the same development site. [Ord 26J, Ord 90-0069]

#### **85.210 Review of Permitted Uses.**

- (1) The Planning Official shall review permitted uses in the Flexible Industrial Overlay Zone that require a Minimal Source Permit or a Regular Discharge Permit from the Oregon Department of Environmental Quality (DEQ). If the Planning Official determines that the scope of a specific request requires a public hearing, the Planning Official may refer the request to the Planning Commission.
- (2) Uses shall be permitted only when the Planning Official or Planning Commission finds that public health, safety, and welfare associated with surrounding land uses will not be adversely affected based on technical findings regarding environmental quality performance standards. Approval by DEQ may be required before final action is taken by the Planning Official or Planning Commission.
- (3) When it appears that noise, dust, odors, emissions, or other adverse environmental impacts will extend outside the boundary of a parcel or lot upon which development is proposed, the Planning Official or Planning Commission shall impose conditions reducing such adverse environmental impacts so that the use will not create a public nuisance. [Ord 26J, Ord 90-0069, Ord 96-0118]

#### **85.305 Development Requirements.**

- (1) Any application for a land use decision or building permit for these parcels or lots made to the County will obligate the property owner of the entire parent parcel and the owner of any parcel or lot created as a result of a land use decision or building permit approval to agree not to remonstrate against annexation to the City of Corvallis, and each party shall agree not to remonstrate against the formation of a local improvement district for the installation of public services in the future.
- (2) The following material shall be submitted with all development applications in accordance with the standards and conditions of this chapter:
  - (a) An access plan for the development area and for the parent parcel.
  - (b) A plan showing the location of future city services and utilities.
  - (c) A map depicting natural drainageways. [Ord 26J, Ord 90-0069, Ord 96-0118]

**85.405 Development Standards.** All structures allowed in the Flexible Industrial Overlay Zone shall be sited in compliance with the standards of the primary zone, BCC Chapter 99, and the following additional standards:

- (1) Access shall be consolidated to cause minimum interference with traffic movements on abutting streets. Where necessary, additional rights-of-way shall be dedicated to maintain adequate traffic circulation.
- (2) Where access is proposed to a State highway, approval by and compliance with the requirements of the Oregon State Highway Division is required.
- (3) Easements for future city services and utilities shall be granted.
- (4) Nonremonstrance agreements for future city services and utilities shall be signed.
- (5) A consent to annex shall be signed. [Ord 26J, Ord 90-0069]

## Chapter 86

### Airport Overlay (/A)

**86.005 Purpose.** The Airport Overlay Zone shall enhance the utility of the Corvallis Municipal Airport by preventing the establishment of any structure or use of land which unreasonably obstructs the airspace required for the safe flight of aircraft in landing or taking off or is otherwise hazardous to such landing or taking off of aircraft. The Airport Overlay Zone is intended to implement recommendations contained in the Corvallis Municipal Airport Master Plan, 1990 - 2010, hereby incorporated by reference. [Ord 90-0069, Ord 92-0092]

#### **86.010 Definitions.**

- (1) "Primary surface" means an imaginary rectangular surface at ground level longitudinally centered on each runway. The primary surface is 1,000 feet wide for Runway 17-35, 500 feet wide for Runway 9-27, and extends 200 feet beyond the end of each runway.
- (2) "Approach surface" means an imaginary inclined surface at the end of each runway. It is horizontally centered on the extended runway centerline, extending outward and upward from the end of the primary surface.
  - (a) The approach surfaces for Runways 9 and 27 (east-west) extend for a distance of 5,000 feet from the end of the primary surface being 500 feet in width where it abuts the primary surface, and 1,500 feet wide at its farthest point.
  - (b) The approach surface for Runway 35 (south) extends for a distance of 10,000 feet from the end of the primary surface, being 1,000 feet in width where it abuts the primary surface, and 3,500 feet in width at the southern boundary.
  - (c) The approach surface for Runway 17 (north) extends for a distance of 10,000 feet from the end of the primary surface, being 1,000 feet in width where it abuts the primary surface, and 4,000 feet in width at the northern boundary.
- (3) Horizontal Surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 5,000 feet from the center of each end of the Primary Surface of Runway 9-27 and 10,000 feet from the center of each end of the Primary Surface of Runways 17-35 and connecting the adjacent arcs by lines tangent to those arcs.
- (4) Conical Surface. Extends twenty (20) feet outward for each one foot upward (20:1) for 4,000 feet beginning at the edge of the horizontal surface and upward extending to a height of 350 feet above the airport elevation.
- (5) Transitional Zones. Extend seven (7) feet outward for each one foot upward (7:1) beginning on each side of the Primary Surface which point is the same elevation as the runway surface, and from the sides of the approach surfaces thence extending upward to a height of 150 feet above the airport elevation (Horizontal Surface). [Ord 90-0069]

#### **86.15 Standards of Application.**

- (1) The Airport Overlay Zone shall apply to all lands in unincorporated Benton County lying within the Clear Zone Approach Safety Zone and Buffer Zone described as follows:
  - (a) The Clear Zone includes the land under that portion of the approach surface of each runway which includes an area centered on the extended centerline of the primary surface and an area adjoining the Primary Surface being of a width and length specified in the diagrams contained in BCC 86.015(2).
  - (b) The Approach Safety Zone includes the land under that portion of the approach surface of each

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runway, outside the Clear Zone and the land area under the Transitional Surface including an area center on the extended center line of the primary surface and runway being of a width and length specified in the diagrams contained in BCC 86.015(2).

- (c) The Buffer Zone includes that area within 14,000 feet of the center line of Runway 17-35 not including the Clear Zone and Approach Safety Zone.(2) The length and width of the Clear Zone and Approach Safety Zone as measured from the centerline or extended centerline of the airport's runway for each runways as shown on the following diagram for Runways 9, 27, 17, and 35. [Ord 90-0069]

**86.105 General Restrictions.** No use in the Airport Overlay Zone shall:

- (1) Create electrical interference with navigational signals or radio communication between the airport and aircraft;
- (2) Make it difficult for pilots to distinguish between airport lights and others;
- (3) Result in glare in the eyes of pilots using the airport;
- (4) Impair visibility in the vicinity of the airport; or
- (5) Create bird strike hazards; or
- (6) Otherwise endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport. [Ord 90-0069]

**86.110 Clear Zone Restrictions.** No above grade structures are permitted within the Clear Zone except those airport related facilities approved by state and federal aeronautic agencies. [Ord 90-0069]

**86.115 Approach Safety Zone Restrictions.** The following uses are prohibited in the Approach Safety Zone:

- (1) Place of public assembly, such as a school, church, grange, community hall or day care center or other similar facilities.
- (2) Industrial discharge impairing visibility, including smoke or steam pollution sources.
- (3) Above ground utility facilities such as television/radio transmission towers, wind generating towers, water towers, and overhead lines except service lines.
- (4) Activities that create bird strike hazards such as water impoundment, or hunting or fishing reserves.
- (5) Parks and campgrounds.
- (6) Any structure which exceeds a height greater than fifty (50) feet above the elevation of the associated primary surface (MSL), except as otherwise determined to be in accordance with the height limits established by the Corvallis Airport Master Plan.
- (7) Residential dwelling within 5,000 feet of the Primary Surface. [Ord 90-0069, Ord 92-0092]

**86.120 Buffer Zone Restrictions.** No structure within the Buffer Zone shall exceed a height greater than 396 feet (MSL) except as otherwise determined to be in accordance with the height limits established by the 1979 Corvallis Airport Master Plan. [Ord 90- 0069]

**86.125 Covenant Required.** Prior to the issuance of a building permit or approval of land use request within the Approach Safety Zone or portions of the Buffer Zone within 1500 feet of a runway, taxiway, hanger or aircraft storage area, an applicant shall submit to the Planning Official for recording a signed covenant recognizing noise impacts resulting from airport operations and waiving rights to remonstrate against the same. The Planning Official shall provide a copy to the Corvallis Airport Manager. [Ord 90-0069]




**86.205 Notice of Construction.** The proponent of proposed construction or alteration on land located within the Airport Overlay Zone shall contact the Northwest Mountain Region, Federal Aviation Administration, Seattle, Washington, to determine whether the proponent is required to submit FAA Form

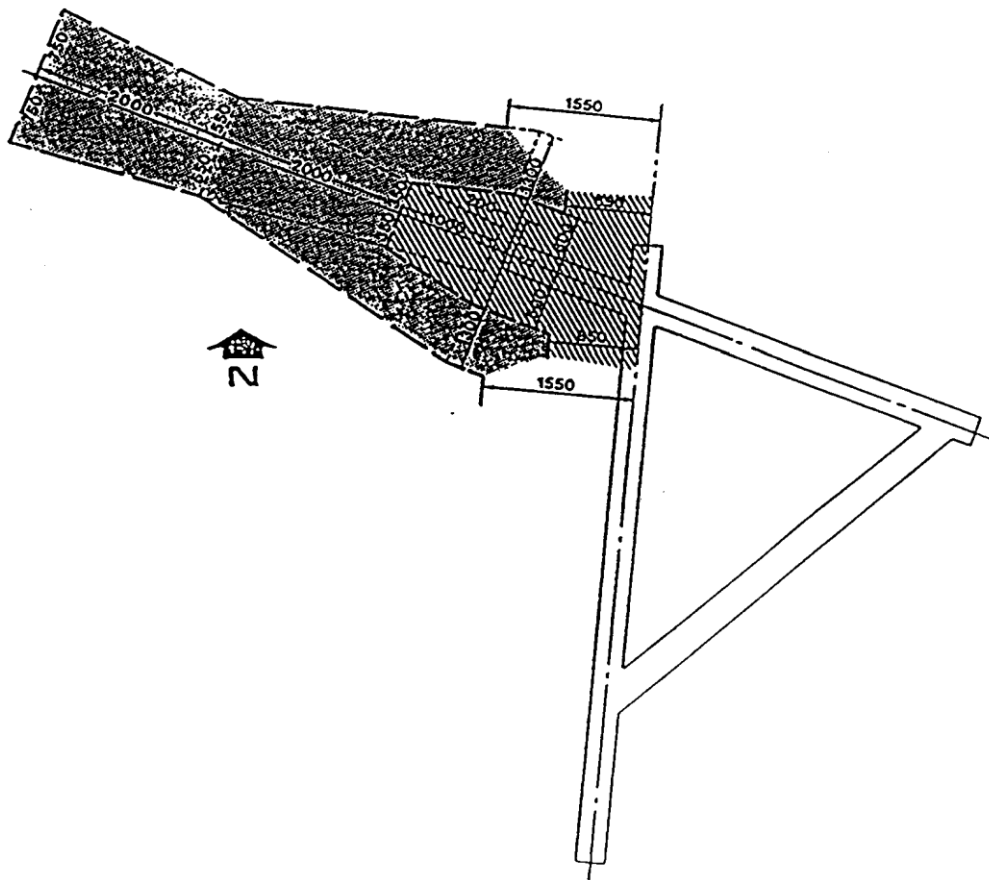
*September 7, 2006*



7460-1 (Notice of Proposed Construction). A copy of such form must also be submitted to the Aeronautics Division of the Oregon Department of Transportation. [Ord 90-0069]




# Runway 9

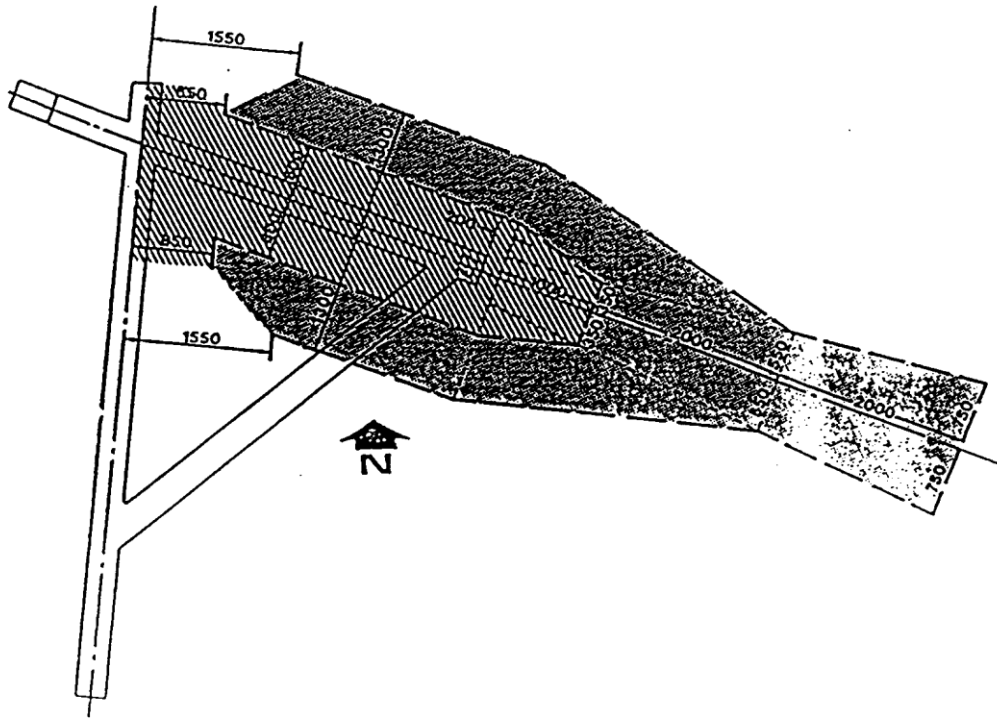
-  Clear Zone
-  Approach Safety Zone
-  Buffer Zone








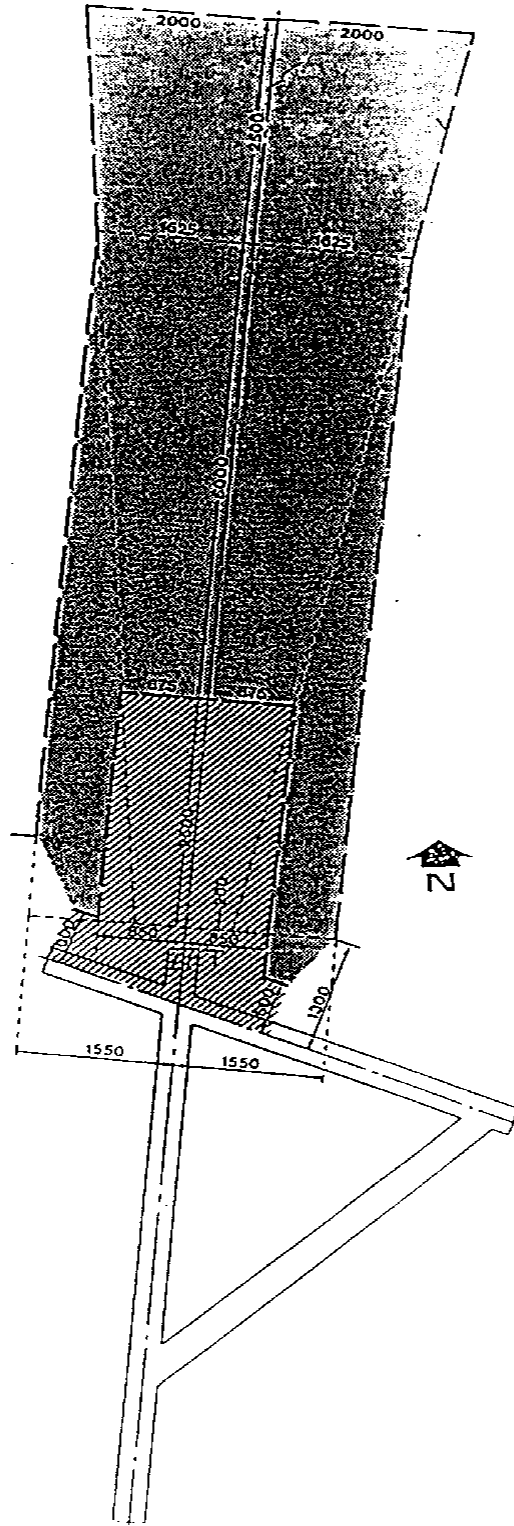
# Runway 27

-  Clear Zone
-  Approach Safety Zone
-  Buffer Zone






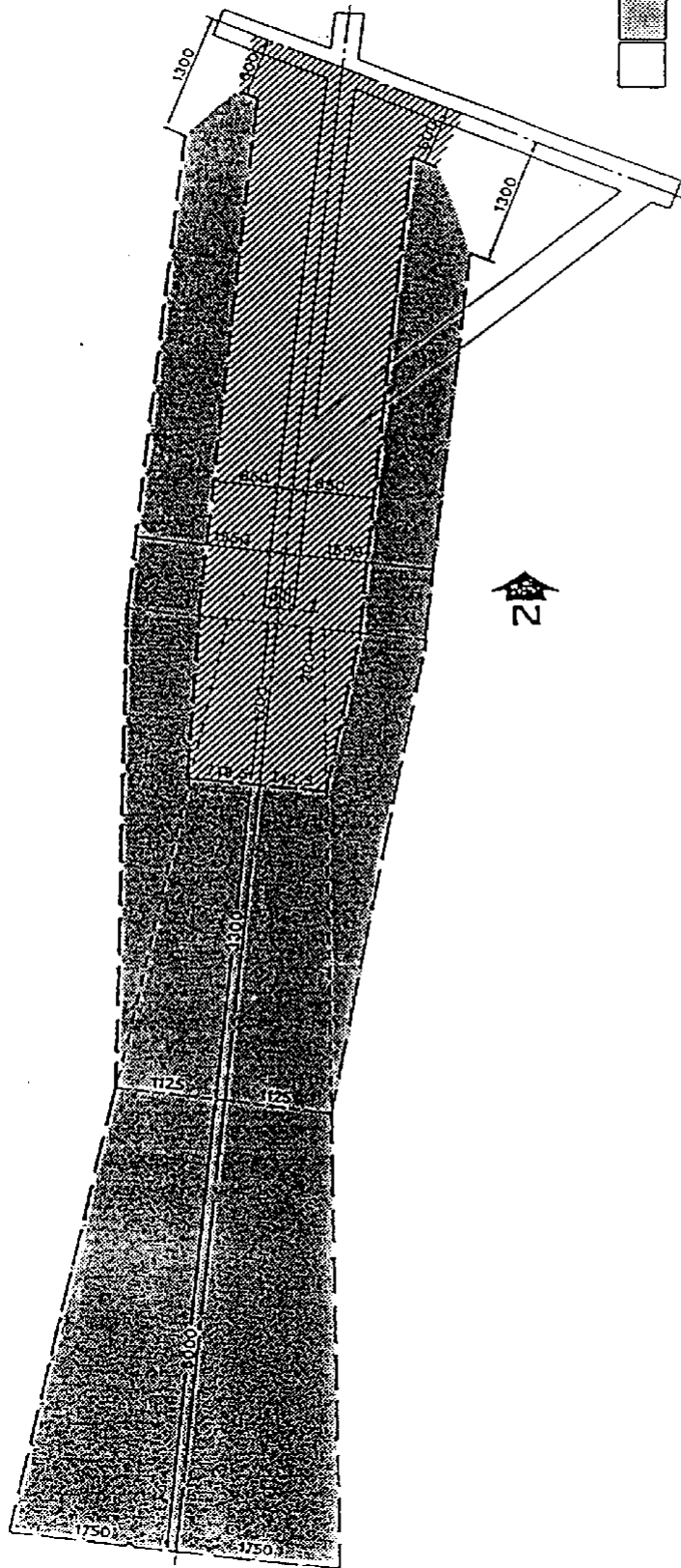
# Runway 17

-  Clear Zone
-  Approach Safety Zone
-  Buffer Zone



# Runway 35

-  Clear Zone
-  Approach Safety Zone
-  Buffer Zone



# Chapter 87

## Goal 5 Resources

### WETLAND OVERLAY (/W)

**87.005 Purpose.** The Wetland Overlay Zone shall provide for wetland protection in accordance with Statewide Planning Goal 5. [Ord 91-0080]

**87.010 Application.** The Wetland Overlay Zone shall apply to the Jackson-Frazier Wetland as inventoried in the February, 1991 ESEE Analysis adopted into the Natural Resources and Hazards Background Report of the Benton County Comprehensive Plan. [Ord 91-0080]

**87.020 Uses and Activities.** The following uses and activities may be permitted within the Wetland Overlay subject to the criteria contained in BCC 87.025 and other provisions of this Code.

- (1) Conservation or preservation of soil, water, vegetation, fish and other wildlife.
- (2) Outdoor recreational activities, such as fishing, birdwatching, or hiking.
- (3) Management activities to maintain or enhance wetland values, including mowing, spraying, prescribed burning, herbicide application, selective vegetation removal, maintenance of drainage ditches and other drainage controls.
- (4) Education and Scientific Research. [Ord 91-0080]

**87.025 Review Criteria.** The development of facilities or the installation of land improvements related to uses and activities identified in BCC 87.020 shall;

- (1) Utilize the best available management practices; and
- (2) Not result in any adverse impact to the identified natural values of the wetland which are recognized in the ESEE Analysis. [Ord 91-0080]

### SURFACE MINING OVERLAY ZONE (/SM)

**87.100 Purpose.** The Surface Mining Overlay Zone shall protect significant aggregate and mineral resources from conflicting uses. [Ord 91-0080]

**87.110 Application.** The Surface Mining Overlay Zone shall be applied to the impact area for a specific surface mining site. Expansion of an existing site or establishment of a new site for removal and processing of mineral or aggregate resources may be reviewed to determine the significance of the potential site. A significant site shall be added to the Comprehensive Plan inventory of mineral and aggregate sites for protection pursuant to Statewide Planning Goal 5. The provisions for the Surface Mining Overlay Zone shall be determined on a site-specific basis in order to resolve those conflicts identified through the analysis of the economic, social, environmental, and energy consequences. The provisions of the Surface Mining Overlay Zone shall be the provisions set forth in the management plan for that site adopted pursuant to BCC 87.130 to 87.140. Such protection does not exempt the use from the provisions of the primary zone. [Ord 91-0080]

**87.120 Procedure for Application.** A person may initiate a zone change pursuant to BCC 53.505 to 53.525 and an amendment to the Comprehensive Plan pursuant to BCC 53.605 to 53.625 for protection of the mineral or aggregate site pursuant to Statewide Planning Goal 5. An application shall include the following information:

- (1) An estimate of the quantity of the resource, in cubic yards, as determined by drilling, digging test holes, or other survey methods.
- (2) A description of the quality of the resource, including a statement of compliance with federal, state, or local standards issued by a certified lab according to the following applicable methods:
  - (a) Resistance to Abrasion (AASHTO Designation T96, ASTM Designation C131, OSHD Test Method 211);
  - (b) Sodium Sulfate Soundness (OSHD Test Method 206);
  - (c) Oregon Air Degradation (OSHD Test Method 208); or
  - (d) Other test methods appropriate for the type of resource.
- (3) If the resource does not comply with the federal, state, or local standards as required in subsection (2) of this section, the description of quality shall be supported by a market analysis of the product, including such factors as use of the product, distance to market, and transportation routes.
- (4) Site map showing the location of test holes and approximate limits of the resource.
- (5) Description of the method(s) of extraction, including types of machinery.
- (6) Vicinity map outlining the area which may be impacted by extraction operations, considering such factors as equipment noise, dust dispersion, range of projectiles, and seismic effects from blasting. The map shall show all property lines, public and private roads, existing land uses, existing structures, and water bodies within the potential impacted area. The area delineated as the potential impacted area shall be considered the affected area for purposes of public notice. Included with the map shall be pertinent information which provides the rationale for the boundary of the potential impacted area.
- (7) Identification of all existing uses which may conflict with extraction of the resource, and all uses reasonably expected to occur within the zone which may conflict with extraction of the resource.
- (8) A copy of the reclamation permit application to the Oregon Department of Geology and Mining Industries, if available. [Ord 91-0080]

**87.130 Surface Mining Site Management Plan.**

- (1) The Planning Commission shall conduct a public hearing pursuant to BCC 51.705 to 51.725 to review the proposed zone change and Comprehensive Plan amendment.
- (2) Notice of the public hearing shall be mailed to the Oregon Department of Fish and Wildlife, and to landowners within the potential impacted area pursuant to BCC 51.605 to 51.625.
- (3) The Planning Commission shall determine the economic, social, environmental, and energy (ESEE) consequences of any conflicting uses on the resource site. If any conflicting use is subject to other Statewide Planning Goals, the ESEE consequences of both resources shall be determined.
- (4) The Planning Commission shall analyze the ESEE consequences and formulate the provisions for a site-specific management plan within the framework of one of the following options:
  - (a) Protect the resource site. All conflicting uses are prohibited within a designated impacted area. The resource site shall be of sufficient importance relative to conflicting uses, and the ESEE consequences of conflicting uses shall be of sufficient magnitude, to prohibit conflicting uses from the defined impacted area. The management plan shall specify what conflicting uses are prohibited.
  - (b) Allow conflicting uses fully. No conflicting uses are prohibited on the site or in the impacted area. The conflicting uses shall be of sufficient importance relative to the resource site to allow all conflicting uses to be developed to the fullest extent permitted by the zone(s), irrespective of ESEE consequences. No management plan shall be prepared and no overlay zone shall be applied.



- (c) Limit conflicting uses. Conflicting uses are allowed within given parameters. Conflicting uses may be limited to an extent which affords a desired degree of protection to the resource site. The management plan shall specify what conflicting uses are allowed to the fullest extent permitted by the zone(s), what conflicting uses are prohibited, and which uses are allowed subject to standards or limitations intended to protect the resource site.
- (5) The Planning Commission shall make a recommendation to the Board of Commissioners on the significance of the resource site and on the overlay zone and management plan.
- (6) The Planning Commission shall adopt findings regarding:
  - (a) The significance of the resource site in terms of location, quality, and quantity of the resource, based on the information contained in the application; and that
  - (b) The proposed management plan to be implemented through the overlay zone, if any, affords the protection to the resource site required by Statewide Planning Goal 5 while balancing the applicability of other Statewide Planning Goals.
- (7) The Board of Commissioners shall dispose of the recommendation pursuant to BCC 53.525 and 53.625. The management plan shall be adopted by ordinance. Findings adopted by the Board of Commissioners shall be included on the Comprehensive Plan inventory of mineral and aggregate sites protected under Statewide Planning Goal 5. [Ord 91-0080]

**SENSITIVE FISH AND WILDLIFE HABITAT OVERLAY (/FW)**

**87.200 Purpose.** The Sensitive Fish and Wildlife Habitat Overlay Zone shall protect sensitive habitats not protected by other programs such as the Willamette River Greenway Program, the Oregon Forest Practices Act or the "Cooperative Agreement between the Board of Forestry and the Fish and Wildlife Commission." The zone shall protect areas that have been identified by Oregon Department of Fish and Wildlife or Oregon Department of Forestry as containing a significant nesting, or roosting site or watering habitat for species that are classified as threatened or endangered and areas designated as sensitive bird nesting, roosting, or watering sites. Habitat protection shall be achieved through the use of site specific management plans that ensure that proposed uses and activities will not destroy or result in the abandonment of these areas. [Ord 91-0080, Ord 93-0098]

**87.210 Application.**

- (1) The Sensitive Fish and Wildlife Habitat Overlay Zone shall be applied to all Northern Bald Eagle nests and roosts, Spotted Owl nests, Osprey nests, Great Blue Heron rookeries, and Band-tailed Pigeon mineral springs.
- (2) Unless alternatively identified by using cultural boundaries, waterways, topography, or through a site specific evaluation of significant habitat components, an established Sensitive Fish and Wildlife Habitat Overlay Zone shall include the area:
  - (a) Within 600 feet of a Great Blue Heron rookery or band-tailed Pigeon mineral spring.
  - (b) Within 1/4 mile of a Northern Bald Eagle nest or roosting site, Spotted Owl nest, or Osprey nest; or

The County shall initiate a review of the application of this zone at the request of the property owner or ODFW if a significant change in habitat has occurred. [Ord 91-0080]

**87.220 Development Permit Review Required.** Within the Sensitive Fish and Wildlife Habitat Overlay Zone, the removal of trees, except for public safety or erosion control, or any development activity which requires a permit shall be subject to the review procedure and evaluation criteria set forth in BCC 87.230.

The provisions of this chapter do not apply to land use actions that are under the jurisdiction of the Oregon Forest Practices Act. [Ord 91-0080, Ord 93-0098]

### **87.230 Review Procedure and Evaluation Criteria.**

- (1) The County shall notify Oregon Department of Forestry (ODF) and Oregon Department of Fish and Wildlife (ODFW) of any permit proposal or tree removal within the Sensitive Fish and Wildlife Habitat Overlay Zone within seven days of the permit request. ODF and ODFW shall review the request and submit a determination of impact report to the County within 14 days of the date of notification. The report shall include conclusions regarding the consequences of allowing the proposed use to occur. If ODF and ODFW provide a finding of no impact, or if no response is received by the end of the 14 day comment period, the provisions of this Section do not apply.
- (2) Submittal of a report concluding that a significant impact may occur from the proposed use shall be supported by findings that either:
  - (a) The proposed use would be located within 600 feet of Northern Bald Eagle nest or roosting site, Spotted Owl nest, or Osprey nest or within 300 feet of a Great Blue Heron rookery or a Band-tailed Pigeon mineral spring; or
  - (b) Due to unique site conditions such as topography, a proposed use located outside the area established in BCC 87.210(2) but within the overlay zone 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 County by ODF or ODFW within 14 days of the determination of impact report. The plan shall consider nesting trees, critical nesting periods, roosting sites, buffer areas, and any other relevant factors and shall also identify measures that would specifically limit the proposed use in a manner consistent with BCC 87.200. ODF and ODFW shall consult with the permit applicant, site landowners, and other persons and agencies in developing the management plan.
- (4) If a determination of impact is made, the County shall review the applicant's development plan, the habitat management plan, and other relevant information. The County shall impose conditions on the proposed use in order to ensure that it will not destroy the sensitive habitat or result in abandonment of the area. The County shall deny the application if such impacts of the proposed use can not be mitigated and that the development may lead to destruction or abandonment of the sensitive habitat. [Ord 91-0080, Ord 93-0098]

### **FENDER'S BLUE BUTTERFLY OVERLAY (/FB)**

**87.300 Purpose.** The Fender's Blue Butterfly Overlay shall implement the private-land provisions of the Benton County Prairie Species Habitat Conservation Plan (HCP), adopted into the Benton County Comprehensive Plan (Ord. 2013-0253), as amended. The purpose of the Fender's Blue Butterfly Overlay is to:

- (1) Reduce Benton County's and private property owners' risk of liability under the federal Endangered Species Act;
- (2) Minimize the impact to habitat of the Fender's blue butterfly;
- (3) Provide private property owners with options for ways to comply with the federal Endangered Species Act; and
- (4) In many cases relieve the property owner of the requirement to individually coordinate with U.S. Fish

and Wildlife Service (USFWS) to obtain approval for construction activity, which expedites the construction timeline, increases certainty and efficiency, and allows financial savings for the property owner.

### **87.310 Application.**

- (1) The Fender's Blue Butterfly Overlay shall apply to land designated as "Fender's Blue Zone" in the Benton County Prairie Species Habitat Conservation Plan (HCP), December 2010, or successor document, other than land within urban growth boundaries of incorporated cities.
- (2) Any modification to the Fender's Blue Butterfly Overlay designation on the Zoning Map or to the provisions of BCC 87.300 through 87.340 shall be consistent with the HCP and shall observe the procedure for modifications specified in the Implementing Agreement between Benton County and USFWS (see HCP document).
  - (a) An error in mapping may be corrected on the Zoning Map pursuant to BCC 51.110(6) and the Minor Amendment process specified in Section 8.8.0.0 of the HCP.
  - (b) Except as specified in subsection (2)(a) above, adding or deleting areas from the Fender's Blue Butterfly Overlay shall require an amendment to the Zoning Map pursuant to 53.505 through 53.525 and the Major Amendment process specified in Section 8.8.0.1 of the HCP.
- (3) **Notification.** Benton County shall notify Oregon Department of Fish and Wildlife and the U.S. Department of Fish and Wildlife regarding applications for the following on land within the Fender's Blue Butterfly Overlay: Zoning Map or Comprehensive Plan amendments, conditional use permits, subdivisions and series partitions. No such notice shall be required for error corrections referenced in subsection (2)(a) above.

### **87.315 Definitions.** As used in this Overlay:

- (1) "Certificate of Inclusion" means formal documentation issued by Benton County pursuant to the Benton County HCP, authorizing take of Fender's blue butterfly habitat.
- (2) "Construction activity" means the following activities:
  - (a) Building or modifying a structure;
  - (b) Placing a manufactured or modular structure;
  - (c) Conducting a septic system feasibility study;
  - (d) Installing, altering or repairing a septic system;
  - (e) Installing plumbing, mechanical or electrical facilities;
  - (f) Constructing a driveway or parking area;
  - (g) Similar activities involving ground disturbance and/or occupation of land for purposes of establishing anything constructed, installed, or portable.
- (3) "Dispersal Zone" (also known as "Lupine Zone") is defined in Section 5.1.0.0 of the HCP.
- (4) "HCP" means the Benton County Prairie Species Habitat Conservation Plan, dated December 2010, approved by the U.S. Fish and Wildlife Service (USFWS) January 2011, as amended, or successor document.
- (5) "Nectar Zone" is defined in Section 5.1.0.0 of the HCP.
- (6) "Take authorization" means approval from USFWS to cause damage to a specific amount (in land area) of Fender's blue butterfly habitat.

**87.320 Authorization Required.** On land located within the Fender's Blue Butterfly Overlay other than land owned by Benton County or right-of-way controlled by Benton County, the following shall apply:

- (1) Prior to initiating ground-disturbing construction activities pursuant to an approved Benton County permit, land use decision, or other authorization issued by Benton County, the property owner shall obtain one of the following:
  - (a) A Certificate of Inclusion granted by Benton County pursuant to BCC Chapter 37, specifically covering the impact of the proposed construction activity (note that not all construction activities allowed by the zoning are eligible for a Certificate of Inclusion pursuant to BCC Chapter 37);
  - (b) Written authorization from USFWS specifically authorizing the proposed construction activity;  
or
  - (c) A habitat survey pursuant to Section 8.2.0.0 of the HCP, demonstrating that there is no Kincaid's lupine within 65 feet and, if inside the Nectar Zone as defined in the HCP, no native nectar species within 33 feet of the proposed construction activities, including all associated ground-disturbing activities.
- (2) Exceptions. The following activities are exempt from the requirement in subsection (1) of this section:
  - (a) Maintaining a garden, lawn, landscaped area or driveway, existing on January 14, 2011, in the same general footprint.
  - (b) Vegetation clearing to maintain a 30-foot fire break around legally existing structures, or other construction activity within the footprint of, or within 30 feet of, a structure legally existing as of January 14, 2011, or a structure permitted or authorized by Benton County.
  - (c) Installing, maintaining or replacing a fence.
- (3) None of the options listed in subsections (1)(a) through (1)(c) of this section are land use actions.

**87.330 Creation of New Parcels and Lots.** Partition or subdivision of land partially or fully within the Fender's Blue Butterfly Overlay shall be subject to the following:

- (1) An application for partition or subdivision shall include all habitat surveys the applicant has access to, and the locations of all issued Certificates of Inclusion or federal take authorizations affecting the subject property.
- (2) An application for series partition or subdivision shall include habitat survey(s) prepared pursuant to Section 8.2.0.0 of the HCP and covering the entire subject property.
- (3) Partitions or subdivisions platted after August 15, 2013, shall be subject to the following:
  - (a) Eligibility of resulting parcels or lots for the granting of a Certificate of Inclusion shall be governed by BCC Chapter 37. Federal authorization will be required for construction activities on ineligible parcels and lots.
  - (b) If any of the lots or parcels in the proposed partition or subdivision are ineligible for Certificate of Inclusion coverage, then, prior to final plat approval, the applicant shall either:
    - (A) Sign documents for recording with the plat acknowledging that development of the properties that are ineligible for Certificate of Inclusion coverage will require obtaining take authorization from USFWS; or
    - (B) Submit a habitat survey, approved by USFWS, demonstrating that each parcel or lot that is ineligible for Certificate of Inclusion coverage has a buildable area meeting the setbacks to Kincaid's lupine and native nectar plants specified in BCC 87.320(1)(c). For parcels or lots upon which such a buildable area cannot be demonstrated to the satisfaction of the Planning

Official, the applicant shall comply with subsection (a) of this section.

**87.340 Preference to Avoiding Habitat.**

- (1) Minor Setback Reduction to avoid or decrease the impact to Fender's blue butterfly habitat.
  - (a) Without obtaining a variance, an applicant may reduce the following required setbacks by up to 20%:
    - (A) Side and/or rear property line setbacks, the 30-foot setback from structures on adjacent properties, the 25-foot or 50-foot setback to a stream, and/or the 300-foot setback from a resource-zoned property;
    - (B) Right-of-way and/or edge-of-road setbacks, at the discretion of the County Engineer.
  - (b) To qualify for this setback reduction, the applicant shall demonstrate that the location of the proposed construction activity for a use listed as permitted outright in the applicable zone would negatively impact Fender's blue butterfly habitat identified by habitat survey, and that the setback reduction would reduce the habitat impact.
- (2) Variance Criteria.
  - (a) In considering a request for variance pursuant to BCC 53.405 through 53.425, the following may be substituted for the criterion in BCC 53.410(1):
    - (A) Reasonable development of the property in a manner consistent with the standards of the Development Code would result in either significant hardship to the property owner, or destruction of habitat for the Fender's blue butterfly identified through a habitat survey pursuant to Section 8.2.0.0 of the HCP.
  - (b) An applicant for a variance pursuant to BCC 53.405 through 53.425 shall demonstrate that variance will not result in an increase in the level of negative impact to habitat for the Fender's blue butterfly.
- (3) Property owners are encouraged to review the Prairie Conservation Strategy (Appendix E of the HCP) or contact local conservation organizations for information on methods to minimize or compensate for unavoidable impacts to habitat. Such organizations may be able to relocate Kincaid's lupine plants or other rare plants prior to construction activities.

[Ord 2013-0253 eff. 8/15/2013]

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## Chapter 88

### Natural Features Overlay in the Corvallis Urban Fringe

**88.005 Purpose.** The provisions of this chapter, in conjunction with the land division provisions of Chapter 100, are intended to minimize natural hazards and protect significant natural resources identified in the Corvallis Natural Features Inventory pursuant to Statewide Planning Goals 5, 6, and 7. In doing so, these provisions will help protect human life and property, public infrastructure, water quality, natural water quantities, habitat for fish, other aquatic life, and terrestrial wildlife, and aesthetic and other values derived from intact natural features.

**88.010 Definitions.** As used in this chapter:

- (1) “Corvallis Urban Fringe Natural Features (CUFNF) Maps” means the three adopted maps entitled “Natural Hazards Map”, “Riparian Corridors and Wetlands Map”, and “Significant Vegetation Map” showing natural hazards and natural resources that are subject to the Natural Features provisions of BCC Chapters 64, 83, 88, and 100.
- (2) “Fire Fuel-Break Safety Zone” means:
  - (a) A safety zone that may be up to 30 feet in all directions from the structure. If the structure is located on a slope, the safety zone downslope of the structure may be increased by the following distances:

<b>Slope greater than:</b>	<b>Add to safety zone downslope:</b>
10%	50 feet
20%	75 feet
25%	100 feet
40%	150 feet

- (b) Within the safety zone defined in subsection (a) above, vegetation may be trimmed or removed to the minimum extent necessary to meet the following standards:
      - (A) Trees spaced with 15 feet between crowns;
      - (B) Tree limbs less than 8 feet above the ground removed;
      - (C) Dead branches and dead vegetation removed;
      - (D) Shrubs and ground cover maintained at less than 24 inches in height.
      - (E) Areas of vegetation removal shall be planted and maintained with grass or other erosion-preventing groundcover. Vegetation planted within riparian, and wetland areas shall be native plants listed on the City of Corvallis Native Plant List.
  - (3) “Geotechnical Report” means a report required in conjunction with development proposals in areas with slopes of 25% or greater, when called for by a Geotechnical Site Assessment (see below), in conjunction with development proposals in landslide hazard areas, or at the discretion of the Building Official. A Geotechnical Report shall include:
    - (a) Data regarding the nature, distribution and strength of existing soils and bedrock;
    - (b) An assessment of slope stability, water drainage patterns and identification of visible landslide activity in the immediate area;

- (c) Conclusions and recommendations for grading procedures and design criteria necessary to ensure the stability of all elements of the proposed use; and
- (d) Opinion on the proposed site's adequacy for the intended use.

When a Geotechnical Report is required by this Code, it shall comply with the requirements for such reports, as prescribed in the Benton County document, once developed, to be entitled "Geotechnical Report Requirements."

It is the responsibility of the geotechnical engineer to provide a report and design recommendations that are appropriate for existing site conditions and the proposed development. The Geotechnical Report shall be completed and stamped by a Licensed Civil Engineer, licensed in the Specialty of Geotechnical Engineering by the Oregon State Board of Engineering Examiners.

- (4) "Geotechnical Site Assessment" means an assessment required in conjunction with development proposals on areas with slopes of 15% or more and for development in landslide hazard areas. The Site Assessment is an overview of site conditions and a professional evaluation of the need for additional studies prior to development on a property. The Site Assessment shall be completed and stamped by either a Certified Engineering Geologist or by a Licensed Civil Engineer, licensed in the Specialty of Geotechnical Engineering by the Oregon State Board of Engineering Examiners.

At a minimum, the Site Assessment shall include the following elements:

- (a) A field investigation of the site and vicinity;
  - (b) A discussion of geologic hazards, if any;
  - (c) Suitability of the site for proposed development, from a geologic standpoint;
  - (d) If applicable, discussion of any unusual or extreme geologic processes at work on the site, for example: rapid erosion, landslide hazard, flood hazard, rockfall, subsidence, debris run-out, or other features;
  - (e) A list of any geologic hazards that may affect the proposed land use, including slope stability, debris flow, flooding, topography, erosion hazard, shallow groundwater, springs, expansive soils, subsidence, fault rupture, or any other geologic hazard discovered by the investigation;
  - (f) If applicable, an identification of any areas of the site recommended to be avoided by human-occupied structures;
  - (g) If necessary, identification of mitigation measures needed to address any anticipated geologic problems;
  - (h) A discussion regarding the need for follow-up studies that should be conducted, such as engineering geotechnical reports, additional subsurface exploration, or more extensive soil reports; and
  - (i) Feasibility of the site for the proposed development.
- (5) "Natural Features" means areas identified on the Corvallis Urban Fringe Natural Hazards Map, Riparian Corridors and Wetlands Map, and Significant Vegetation Map as containing Natural Hazards (steep slopes, landslide hazards, floodplain, floodway) and/or Natural Resources (riparian areas, wetland areas, or significant vegetation).
  - (6) "Natural Hazards" means areas identified on the Corvallis Urban Fringe Natural Hazards Map, as containing steep slopes, landslide hazards, floodplain, or floodway.
  - (7) "Natural Resources" means areas identified on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map or Significant Vegetation Map as containing riparian areas, wetland areas, or significant vegetation).



- (8) “Top-of-Bank” means the “bankfull stage” of a stream which is the stage or elevation at which water overflows the natural banks of streams or other waters of the state and begins to inundate the upland. In the absence of physical evidence, the two-year recurrence interval flood elevation may be used to approximate the bankfull stage or delineate the top-of-bank.

[Ord. 2005-0209; 2005-0210; 2005-0211]

### **88.050 Mapped Locations, Refinements and Corrections.**

- (1) The provisions of this chapter shall be applied to lands identified on the Corvallis Urban Fringe Natural Features Maps, as described in this section. Modifications to the adopted Natural Features maps may be made in the following two ways, pursuant to this section.
- (a) “Map refinements” are adjustments made through professional analyses to refine the actual boundaries of certain natural resources and hazards. Refinements may be effected administratively, with no land use process required, through the applicant or property owner demonstrating the refinement standards below have been met. Refinements may or may not be shown on the Natural Features map, depending on scale and other factors, but at a minimum shall be attached to the Community Development Department records for the property.
- (b) “Map corrections” rectify errors to the mapping of natural resources and hazards where it is found that the map depiction does not reflect the Natural Features Inventory, as described for each resource type below. These map corrections shall be made by the Planning Official and do not require Zone Changes or Comprehensive Plan Map Amendments. Map corrections shall be coordinated with the Corvallis Community Development Director. Periodically, for informational purposes, the Planning Official shall forward accumulated map corrections to the Benton County Board of Commissioners and Planning Commission and the Corvallis City Council and Planning Commission.
- (2) **Floodplain.** The determination of floodplain boundaries shall be as described in BCC 83.110(3). The regulations governing these areas are contained in BCC Chapter 83.
- (3) **Steep Slopes.**
- (a) **Application.** Areas shown on the Corvallis Urban Fringe Natural Hazards Map as having slopes exceeding 15% shall be subject to the provisions of BCC 88.100. The steep slope provisions are applicable only to the specific portions of a site which contain the specified slopes, as shown on the Corvallis Urban Fringe Natural Hazards Map.
- (b) **Map Refinement.** If a property owner demonstrates – by submittal of a topographic survey prepared by a registered Professional Land Surveyor or Licensed Civil Engineer using a contour interval of 2 feet or less, or by use of the City or County topographic map (with a 2- foot or smaller contour interval) – that the slope in a given area is different from that shown on the Natural Hazards Map, then the submitted slope information shall be used as the basis for determining the applicable provisions of BCC 88.100. Alternatively, through a site visit the Planning Official may determine that a particular site is clearly not on steep slopes, in which case the standards shall not apply.
- (4) **Landslide Hazard.**
- (a) **Application.** Areas identified on the Corvallis Urban Fringe Natural Hazards Map as “High Landslide Risk”, “Existing Landslide”, or “Landslide Debris Runout Areas” shall be considered “Landslide Hazard Areas” and shall be subject to the provisions of this section.
- (b) **Map Refinement.**
- (A) Precise locations of Landslide Hazard area boundaries are determined on the basis of published information prepared by the Oregon Department of Geology and Mineral Industries (DOGAMI), or on the basis of site-specific Site Assessments and/or Geotechnical Reports as required by BCC 88.200.

- (B) The mapping of Landslide Debris Runout Areas shall be refined as follows. On a site- specific basis as development is proposed, if a mapped area of Landslide Debris Runout Area is not adjacent downslope to an area of mapped “High Landslide Risk”, “Existing Landslide”, or slope exceeding 35%, the boundary of the Landslide Debris Runout Area shall be adjusted, consistent with BCC 88.200(3).
- (c) **Map Correction.** There are two methods by which corrections may be made to the Landslide Hazard designation on the Natural Hazards Map.
  - (A) Determination by the Oregon Department of Geology and Mining Industries (DOGAMI). If the Oregon Department of Geology and Mining Industries (DOGAMI) determines that a potential Landslide Hazard area has been incorrectly depicted on the Natural Hazards Map, and such determination is officially expressed by DOGAMI through a letter or publication, then a Map Correction to remove indication of the Landslide Hazard area shall be effected by the Planning Official.
  - (B) Determinations Reached by a Site Assessment and Geotechnical Report. If a property owner provides the Planning Official with the items listed in (i) below, a request to remove indication of a Landslide Hazard area from the Natural Hazards Map and other affected maps shall be considered as outlined in (ii) and (iii) below.
    - (i) For a Map Correction request to consider removal of a Landslide Hazard from the Natural Hazards Map and other related maps, the following information is required:
      - (1) A Geotechnical Report and Site Assessment which meet the criteria identified in BCC 88.010(3) and (4). In addition to the items identified in BCC 88.010(3), the Geotechnical Report shall specifically address the absence, characteristics, and/or precise location of the identified hazard(s) on the subject property which is/are depicted on the Corvallis Urban Fringe Natural Hazards Map. If other reports are called for by the Site Assessment, these reports shall also be submitted; and
      - (2) An indemnification and release agreement in accordance with the provisions of Section 88.200(4);
    - (ii) Map Correction requests shall be reviewed by the Planning Official, Building Official, and County Engineer, in coordination with the Corvallis Community Development Department.
    - (iii) To approve a Map Correction request, the Planning Official must find that:
      - (1) The information required by “i” above has been provided and is complete;
      - (2) The required technical reports and recommendations sufficiently demonstrate that there is no Landslide Hazard on or near the area identified on the Natural Hazards Map; and
      - (3) The required technical reports and recommendations sufficiently demonstrate that development on the subject area would not increase landslide risks on the development site, nor upon neighboring properties.
- (5) Earthquake fault lines are shown on a separate Corvallis map for advisory purposes. Pursuant to adopted building code, the Building Official may require geotechnical study, engineered solutions, or other assurance that construction in the vicinity of mapped fault lines will be adequately protected from earthquake hazard.
- (6) **Riparian Areas.**
  - (a) **Application.** The riparian area that shall be subject to the provisions of BCC 88.300 through 88.350 shall consist of the stream channel plus a riparian corridor that extends to a specified distance

measured from the top-of-bank. The width of the riparian corridor at a given point along a stream has been determined by the land area drained to that point, as shown in Table 88-1. This width is indicated on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map by a color that corresponds to a numeric distance in feet. That distance shall be measured horizontally from the top-of-bank, perpendicular to the streambank. The entire area of any wetlands shown on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map that fall partly or entirely within the protected riparian area shall likewise be considered protected riparian area subject to the provisions of this chapter.

- (b) **Map Refinement.** For a given site, the top-of-bank (as defined in BCC 88.010) shall be determined by a licensed civil engineer, or by the Planning Official or the Planning Official’s designee, either in the field or using contour intervals of 2 feet or less surveyed by a licensed surveyor or civil engineer or obtained from the official topographic mapping maintained by the City of Corvallis or Benton County.
- (c) **Map Correction.**
  - (A) If a property owner demonstrates to the satisfaction of the Planning Official, through the use of topographic mapping, that the actual area drained to a point would result in a lesser riparian corridor width at that point (as determined through Table 88-1) than is shown on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map, then the riparian corridor width shall be revised accordingly. Topographic mapping used for this purpose shall have a contour interval of 2 feet or less, and shall either be produced from a survey by a licensed surveyor or civil engineer or be the official topographic mapping maintained by the City of Corvallis or Benton County.
  - (B) If the Planning Official or the Planning Official’s designee determines through a site visit that no discernable channel exists, the map shall be corrected to remove the riparian corridor designation. This provision shall not apply to stream channels that have been altered or obliterated by human action.

**Table 88-1: Riparian Corridor Widths**

<b>Drainage Basin</b>	<b>Riparian Corridor Width</b>
Less than 20 acres	50 feet from top-of-bank
20 to 160 acres	75 feet from top-of-bank
More than 160 acres	100 feet from top-of-bank
Willamette River, Marys River and associated channels (e.g. Booneville Slough)	120 feet from top-of-bank

- (7) **Wetlands.**
  - (a) **Application.** The following categories of wetlands have been identified. Areas described by subsection (A) are subject to BCC 88.320 through BCC 88.350, while areas described by subsection (B) are subject to only BCC 88.350.
    - (A) “Systems-Critical Wetlands.” Wetlands subject to the provisions of BCC 88.320 through 88.350 are the areas identified as “Systems-Critical Wetlands” on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map plus a 25-foot buffer. Benton County has determined these wetlands to be locally significant and has adopted protections through the Goal 5 ESEE process. The local wetlands inventory which identified and mapped these wetlands was deemed accurate to within 25 feet; thus a 25- foot buffer is applied. These wetlands are also included on the Corvallis Local Wetland Inventory (LWI) Map.

- (B) “Other Wetlands.” Wetlands that are not subject to Benton County regulations, but which may be subject to state and/or federal regulations are shown on the Corvallis Local Wetland Inventory (LWI) Map. They are not shown on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map.
  - (b) **Map Refinement.** The property owner or applicant may refine the wetlands boundary by submitting an unexpired wetland delineation that has been accepted and approved by the Department of State Lands. A wetland boundary established by an approved delineation shall not be subject to the 25-foot-buffer requirement.
  - (c) **Map Correction.** If a property owner submits documentation demonstrating that information in the Corvallis Natural Features Inventory was incorrectly translated to the Riparian Corridors and Wetlands Map, the Planning Official shall effect the appropriate changes to the Map.
- (8) **Significant Vegetation.**
- (a) **Application.** Areas shown on the Corvallis Urban Fringe Significant Vegetation Map are subject to the provisions of BCC 88.400 through 88.430. The mapped areas are divided into three categories: Protected Prairie and Savanna; High Protection Significant Vegetation (HPSV); and Partial Protection Significant Vegetation (PPSV).
  - (b) **Map Refinement and Correction.** The mapped boundaries of Significant Vegetation areas are not subject to refinement or correction.
- (9) Additional requirements and options regarding Natural Features are contained in Chapters 64 (Urban Residential) and 100 (Planned Unit Development in the Corvallis Urban Fringe).
- (10) Where there is conflict among provisions of separate sections of this chapter or other chapters applying to the same area, the more restrictive provisions shall prevail.

[Ord. 2005-0209; 2005-0210; Ord 2005-0211, Ord 2021-0304]

## STEEP SLOPES

**88.100 Purpose.** To reduce economic losses to property, to reduce hazard to human life, and to reduce soil erosion, stream sedimentation and other environmental damage, the following provisions limit development on the steepest slopes and allow appropriately designed development on lesser slopes. Retention of existing vegetation and planting new vegetation in disturbed areas is a key element in reducing erosion and landslide risk. Noxious or invasive vegetation should not be used for this purpose, because of its potential to spread to other areas and have undesired consequences.

- (1) Lands subject to the provisions of this section are identified in BCC 88.050.
- (2) Creation of a parcel or lot containing steep slopes, or development activities on such a parcel or lot, shall require the property owner to record in the County Deed Records a statement acknowledging the presence of steep slopes, which shall put all future owners of the property on notice of the steep slopes.
- (3) In areas with slopes greater than or equal to 35%:
  - (a) Structures, excavation, roads, and driveways are prohibited, except for roads or driveways demonstrated to be necessary to provide access to an allowed use. Any authorized road or driveway shall be designed and implemented consistent with a site assessment and geotechnical report (as defined in BCC 88.010(3) and (4)), and shall require the applicant to sign an agreement, provided by the County, to indemnify and release the County from potential liability resulting from damage to life or property resulting from development on steep slopes. This indemnity and release shall be recorded in the deed records for the property, and shall run with the land.
  - (b) Removal of trees larger than four inches in diameter at four feet above grade is prohibited. This prohibition shall not apply to:

- (A) Removal of a hazard tree, defined as a live or dead tree that poses a current threat to human life or structures.
  - (B) The minimum vegetation removal necessary to establish and maintain a fire fuel-break safety zone, as defined in BCC 88.010(2), surrounding a legally existing structure.
  - (C) Commercial forestry activities authorized by the Oregon Department of Forestry.
  - (D) Vegetation removal necessary to implement pedestrian trails specified in a public park management plan adopted by the appropriate governing body.
  - (E) Vegetation removal in conjunction with road or driveway construction authorized under the exception provision in BCC 88.100(3)(a).
  - (F) Vegetation removal within the area authorized under the provisions for a Modification to Natural Features Standards (BCC 88.800).
- (c) In all areas where ground disturbance or vegetation removal is authorized, where such areas will not be covered by structures or pavement, the ground shall be planted and maintained in erosion-inhibiting vegetation not listed as noxious or invasive by the Oregon Department of Agriculture. To minimize hazards associated with steep slopes, Benton County encourages minimizing the removal of vegetation;
- (4) In areas of slopes greater than or equal to 25% and less than 35% where development is allowed by the BCC Natural Features provisions, structures, excavation, roads and driveways, and vegetation removal including commercial timber harvest are allowed, provided:
- (a) Development activities are designed and implemented consistent with a site assessment and geotechnical report and any other report deemed necessary by the site assessment report;
  - (b) All areas of ground disturbance or vegetation removal not involving structures or pavement are planted and maintained in erosion-inhibiting vegetation not listed as noxious or invasive by the Oregon Department of Agriculture. To minimize hazards associated with steep slopes, Benton County encourages minimizing the removal of vegetation; and
  - (c) Commercial forestry activities shall be conducted pursuant to forest practices rules implemented by Oregon Department of Forestry.
- (5) In areas with slopes greater than or equal to 15% and less than 25% where the BCC Natural Features provisions allow development, structures, excavation, roads and driveways, and vegetation removal including commercial timber harvest are allowed, provided:
- (a) Development activities are designed and implemented consistent with a geotechnical site assessment;
  - (b) All areas of ground disturbance or vegetation removal not involving structures or pavement are planted and maintained in erosion-inhibiting vegetation not listed as noxious or invasive by the Oregon Department of Agriculture. To minimize hazards associated with steep slopes, Benton County encourages minimizing the removal of vegetation; and
  - (c) Commercial forestry activities shall be conducted pursuant to forest practices rules implemented by Oregon Department of Forestry.
- (6) Prior to creation of any new parcel or lot, the applicant shall demonstrate the parcel or lot will be developable consistent with provisions of this chapter. If necessary to demonstrate this standard can be met, the Planning Official may require a geotechnical site assessment or geotechnical report prior to final approval of the subdivision or partition plat.

[Ord. 2005-0209]

## LANDSLIDE HAZARD AREAS

**88.200 Purpose.** To reduce economic losses to property and to reduce hazard to human life, the following provisions limit development in landslide hazard areas and ensure that any development that is allowed is appropriately designed.

- (1) Lands subject to the provisions of this section are identified in BCC 88.050.
- (2) If excavation, placement of fill, or construction or placement of structures is proposed inside, or within 100 feet of, a “High Landslide Risk,” “Existing Landslide,” or “Open-Slope Debris Runout” area, those activities are allowed only on the basis of a site assessment and geotechnical report (as defined in BCC 88.010(3) and (4)) finding that there is negligible risk of landslide and the proposed activities will not increase the risk. If specific design or implementation measures are necessary to ensure negligible risk, the geotechnical report shall specify those measures, and the activity shall be carried out pursuant to those measures.
- (3) If excavation, placement of fill, or construction or placement of structures is proposed inside a “Confined Channel Debris Runout” area, development activities may only be allowed on the basis of the following type of review:
  - (a) If, at the same elevation or upslope of the proposed development, the “Confined Channel Debris Runout” area is intersected by or adjacent to an area of “High Landslide Risk,” “Existing Landslide,” “Open-Slope Debris Runout,” or slope exceeding 35%, a site assessment and geotechnical report are required.
  - (b) If, at the same elevation or upslope of the proposed development, the “Confined Channel Debris Runout” area is intersected by or adjacent to an area of 15% to 35% slope, a site assessment is required.
  - (c) If no steep slopes or landslide hazards are shown on the Corvallis Urban Fringe Natural Hazards Map occurring at the same elevation or upslope of the proposed development, a site assessment is recommended but not required.
- (4) Removal of trees larger than four inches in diameter at four feet above existing grade is prohibited in “Confined Channel Debris Runout” areas and in or within 100 feet of any other mapped landslide hazard area unless a geotechnical report finds that removal of trees will not increase the risk of landslide or other geologic hazard. Trees may also be removed for the following purposes:
  - (a) Removal of a hazard tree, which poses a current threat to life or property;
  - (b) The minimum vegetation removal necessary to establish and maintain a fire fuel-break safety zone surrounding a structure, as defined in BCC 88.010(2); or
  - (c) Commercial forestry activities conducted pursuant to forest practices rules implemented by Oregon Department of Forestry.
- (5) Prior to issuance of building permits for any structures authorized under subsection (2) or (3) of this section, the applicant shall sign an agreement, provided by the County, acknowledging the presence of mapped landslide hazard areas and indemnifying, holding harmless and releasing the County from potential liability resulting from damage to life or property resulting from landslides. This indemnity, hold harmless and release agreement shall be recorded in the Deed Records of Benton County and shall run with the land.
- (6) New parcels or lots containing landslide hazard areas shall be designed with sufficient buildable area to enable reasonable development of the property in compliance with subsections (2) and (3) of this section, either through siting restrictions or through the applicant for partition or subdivision submitting a geotechnical report demonstrating that the lot can be safely developed. Creation of a parcel or lot containing landslide hazard areas shall require the property owner to record in the County Deed Records a statement acknowledging the presence of mapped landslide hazard areas, which shall put all future owners of the

property on notice of the landslide hazards.

[Ord. 2005-0209]

## **RIPARIAN AND WETLAND AREAS**

**88.300 Purpose.** To preserve riparian and wetland functions contributing to water quality, natural water quantities, fish habitat, wildlife habitat, flood control and streambank stabilization, the following provisions limit disruption of native vegetation, soils and hydrology, and limit the intrusion of structures into the riparian and wetland area.

### **88.310 Application.**

- (1) The provisions of BCC 88.300 through 88.350 shall apply to the lands identified in BCC 88.050.
- (2) Note: Generally the same limitations on vegetation removal and building, paving, and grading activities described in this section likewise apply to the entire floodplain; refer to BCC 83.700 for the floodplain regulations.

[Ord 2021-0304]

### **88.320 Vegetation Removal.**

- (1) Removal or alteration of vegetation from Riparian Areas, and from Systems-Critical Wetlands and associated 25-foot buffers, is prohibited except for the following purposes:
  - (a) Removal of a hazard tree which poses a current threat to life or property. Tree removal shall comply with the following standards:
    - (A) The stump and root wad of any altered tree shall remain undisturbed in place; and
    - (B) Any tree removed is required to be replaced by like native species or alternate approved native species.
  - (b) Maintenance of lawns, planted vegetation, and landscaping, to the extent existing on October 6, 2005.
  - (c) Stream restoration and enhancement programs approved by the Oregon Department of Fish and Wildlife as improving riparian function, and wetland restoration and enhancement programs approved by Oregon Department of State Lands or the Oregon Department of Fish and Wildlife.
  - (d) Removal of non-native, invasive, and/or noxious vegetation, as identified in the Oregon Department of Agriculture's Oregon Weed Policy and Classification System (Appendix 1), including weeds designated as "A", "B", and/or "T". As necessary to control erosion, areas of vegetation removal shall be re-vegetated with native species listed on the City of Corvallis Native Plant List. If necessary to prevent erosion prior to new vegetation becoming established, short-term, non-structural erosion control measures shall be employed.
  - (e) Substitution of native plant species for non-native plants. Additionally, native plants may be planted without accompanying removal of non-native plants. All new plantings shall be species listed on the City of Corvallis Native Plant List as appropriate for the proposed location. Plantings being substituted for non-native plants shall be species identified on the

Corvallis Native Plant List as being in the same ecological-function category as the replaced plants. Plantings shall be maintained to ensure they become established.

- (f) Development of water-related or water-dependent uses that are allowed in the underlying zone, provided they are designed and constructed to minimize impact on existing riparian vegetation.
- (g) The minimum vegetation removal necessary to establish and maintain a fire fuel-break safety zone surrounding a structure, as defined in BCC 88.010(2). Benton County encourages property owners to consult with the Oregon Department of Fish and Wildlife on ways to minimize the impact of this vegetation removal and to mitigate the impacts that do occur.
- (h) Continuation of farm use, limited to areas that have been converted to farm use prior to October 6, 2005. The property owner shall have the burden of proof in demonstrating that an area was converted prior to this date.
- (i) Commercial forestry activities authorized by the Oregon Department of Forestry.
- (j) The minimum vegetation removal necessary to establish a pedestrian trail located at least 10 feet from the top of bank.
- (k) Vegetation removal in conjunction with a development activity allowed under BCC 88.330(2).
- (l) Vegetation removal within the area authorized under the provisions for a Modification to Natural Features Standards (BCC 88.800).

[Ord. 2005-0210]

### **88.330 Building, Paving, and Grading Activities**

- (1) The following activities are prohibited within Riparian Areas and Systems-Critical Wetlands shown on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map, except as allowed in subsection (2):
  - (a) Placement of structures or impervious surfaces;
  - (b) Grading, excavation, and the placement of fill;
  - (c) Construction of wells and septic systems;
  - (d) Draining of wetlands.
- (2) The following exceptions to the prohibitions in subsection (1) above are allowed, provided they are designed and constructed to minimize adverse impacts to riparian and wetland areas:
  - (a) Replacement of existing structures with structures located on the original building footprint or up to a maximum deviation of 10% from the original footprint. Vertical additions to these structures are allowed if they do not disturb additional riparian or wetland surface area. Structures abandoned for a period of one year or longer are not eligible for replacement.
  - (b) The following types of infrastructure, provided they are oriented perpendicular to the riparian corridor or otherwise designed to cause negligible impact to proper riparian or wetland function, and provided any necessary stream crossings meet Oregon Department of Fish and Wildlife fish passage standards and accommodate the 50-year flood event flow:
    - (A) Construction of streets, roads, public utilities, and bicycle and pedestrian ways that are included in the City of Corvallis Transportation Plan, or in other adopted City infrastructure/utility plans. If a street or road is allowed by Benton County to be constructed within a Natural Feature mapped on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map, the road shall be constructed with 10-ft. wide travel lanes and without (excluding) on-street parking and park strips for the portion of the street within the Natural Feature.



- (B) Construction of streets, roads, and pedestrian ways necessary in order to maintain an acceptable functional classification of roadways adjacent to the property, if no feasible alternative is available outside of identified resources. If a street or road is required by Benton County to be constructed within a Natural Feature mapped on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map, the road shall be constructed with 10-ft. wide travel lanes and without (excluding) on-street parking and park strips for the portion of the street within the Natural Feature.
  - (C) Driveways necessary to provide access to an approved building site, provided the disturbed riparian surface area is minimized.
  - (D) Pedestrian trail, which is an unpaved path, four feet or less in width, designed for and used primarily by pedestrians.
- (c) Development of water-related and water-dependent uses where no other viable locations exist and that minimal riparian and wetland surface area is impacted;
  - (d) Grading and excavation related to farm use, limited to areas that have been converted to farm use prior to October 6, 2005. The property owner shall have the burden of proof in demonstrating that an area was converted prior to this date.
  - (e) Erosion control or flood control measures that have been approved by the Oregon Department of State Lands (DSL) and/or the U.S. Army Corps of Engineers, and that utilize bio- engineering methods. Streambank hardening (installation of hard-surfaced erosion- or flood- protection structures such as rip-rap) is prohibited except where necessary to address an imminent hazard to a structure built prior to October 6, 2005. Where allowed, hard-surface measures shall be designed by a Professional Engineer licensed by the State of Oregon, and shall at a minimum, require backfilling with soil and planting with native vegetation;
  - (f) Development authorized under the provisions for a Modification to Natural Features Standards (BCC 88.800).

[Ord. 2005-0210]

**88.340 Land Divisions.** Parcels or lots resulting from subdivisions, partitions and property line adjustments shall be designed such that existing and future uses and development activities allowed by the underlying zone can be carried out in conformance with the regulations contained in this chapter. Creation of lots or parcels that do not meet this requirement is prohibited, with the exception of lots or parcels created for public park or open space purposes.

**88.350 Notification to State and Federal Agencies Required.** In addition to the restrictions and requirements of this section, all proposed development activities within any wetland are also subject to Oregon Department of State Lands (DSL) standards and approval. In accordance with ORS 227.350, the applicant shall be responsible for notifying DSL whenever any portion of any wetland is proposed for development. No application for development will be accepted as complete until documentation of such notification is provided, and no development shall be permitted until the County has received verification of DSL approval for development on the subject site.

[Ord. 2005-0210]

#### **SIGNIFICANT VEGETATION (Rare Habitats and Tree Groves)**

**88.400 Purpose.** Oak savanna, upland prairie, stands of large-diameter Douglas fir, and tree groves containing Oregon white oak are all considered significant vegetation. The purpose of this section is to encourage property owners to maintain areas of significant vegetation, and to establish land use protections for the upland prairies and oak savannas identified in the Natural Features Inventory as having the highest ecological value. These areas provide valuable stormwater control and water quality utilities, provide

habitat for rare plant and animal species, and add to the aesthetic appeal of the community. [Ord 2005-0211]

**88.410 Application.** The provisions of this section shall apply to the areas identified in 88.050(8). [Ord 2005-0211]

**88.420 Notice Regarding Annexation:** When land identified as significant vegetation is annexed to the City of Corvallis, the requirements of the Corvallis Land Development Code will apply. The Corvallis code provisions require protection of certain land areas and require a certain percentage of tree canopy be maintained during and after development. The required tree canopy will be required whether or not the trees are there and will be more easily attained if existing trees are left in place than if they are removed and must be replanted by the property owner or developer. Development will not be allowed in HPSV areas, except for a very few specified exceptions (such as attaining the City's minimum assured development area or providing streets required by the Corvallis Transportation Plan). [Ord 2005-0211]

**88.430 Incentives.** Voluntary protection by property owners of areas mapped as High Protection Significant Vegetation (HPSV) may qualify for additional land development rights pursuant to BCC 64.305(3) or 100.150(7). [Ord 2005-0211]

#### **88.440 Protected Upland Prairie and Oak Savanna**

(1) On land identified as Protected Upland Prairie or Oak Savanna on the Corvallis Urban Fringe Significant Vegetation Map, ground disturbance, vegetation removal, and placement of structures are prohibited. Exceptions are allowed for the following uses and activities:

- (a) Removal of Douglas fir or non-native trees;
- (b) Removal of a hazard tree which poses a current threat to life or property. Tree removal shall comply with the following standards:
  - (A) The stump and root wad of any altered tree shall remain undisturbed in place;
  - (B) If an Oregon white oak is removed from an oak savanna, it shall be replaced by a tree of the same species.
- (c) Maintenance of lawns, planted vegetation, and landscaping, to the extent existing on November 25, 2005.
- (d) Activities pursuant to a wildlife habitat conservation and management plan approved by the Oregon Department of Fish and Wildlife;
- (e) Vegetation management plan approved by the Planning Official in consultation with specialists deemed appropriate by the Planning Official. The applicant shall demonstrate that the plan will, in both the short term and long term:
  - (A) Maintain or enhance the characteristics which qualified the site for Natural Feature protection as described in the Natural Features Inventory; and
  - (B) Implement the vegetation management activities recommended in the Natural Feature Inventory Report and Database for enhancement for each affected habitat area (subpolygon);

Failure to comply with the full implementing conditions of approval of the vegetation management plan may result in enforcement pursuant to BCC 88.900.

- (f) Removal of non-native, invasive, and/or noxious vegetation, as identified in the Oregon Department of Agriculture's Oregon Weed Policy and Classification System (Appendix 1), including weeds designated as "A", "B", and/or "T". As necessary to control erosion, areas of vegetation removal shall be re-vegetated with native species. If necessary to prevent erosion prior to new vegetation becoming established, short-term, non-structural erosion control measures shall be employed;

- (g) Substitution of native plant species for non-native plants. Additionally, native plants may be planted without accompanying removal of non-native plants. All new plantings shall be species listed on the City of Corvallis Native Plant List as appropriate for the proposed location. Plantings being substituted for non-native plants shall be species identified on the Corvallis Native Plant List as being in the same ecological-function category as the replaced plants. Plantings shall be maintained to ensure they become established.
- (h) The minimum vegetation removal or trimming necessary to establish and maintain a fire fuel-break safety zone surrounding a structure, as defined in BCC 88.010(2). Benton County encourages property owners to consult with the Oregon Department of Fish and Wildlife on ways to minimize the impact of this vegetation removal and to mitigate the impacts that do occur.
- (i) Continuation of agricultural activities, limited to areas that have been converted to farm use prior to November 25, 2005. The property owner shall have the burden of proof in demonstrating that an area was converted prior to this date.
- (j) Replacement of existing structures with structures located on the original building footprint or up to a maximum deviation of 10% from the footprint existing on November 25, 2005. Vertical additions to these structures are allowed if they do not disturb additional surface area. Structures abandoned for a period of one year or longer are not eligible for replacement.
- (k) The following types of infrastructure, provided they are designed to minimize the encroachment into and impact on the prairie and/or savanna:
  - (A) Construction of streets, roads, public utilities, and bicycle and pedestrian ways that are included in the City of Corvallis Transportation Plan, or in other adopted City infrastructure/utility plans, if no feasible alternative is available outside of identified features; If a street or road is allowed by Benton County to be constructed within a natural feature mapped on the Corvallis Significant Vegetation Map, the road shall be constructed with 10-ft. wide travel lanes and with no on-street parking and no park strips for the portion of the street within the natural feature.
  - (B) Construction of streets, roads, and pedestrian ways necessary in order to maintain an acceptable functional classification of roadways adjacent to the property, if no feasible alternative is available outside of identified features. If a street or road is required by Benton County to be constructed within a natural feature mapped on the Corvallis Significant Vegetation Map, the road shall be constructed with 10-ft. wide travel lanes and without (excluding) on-street parking and park strips for the portion of the street within the natural feature.
  - (C) Driveway necessary to provide access to an approved building site.
- (l) Implementation of passive recreational facilities such as pedestrian trails and picnic areas specified in a public park management plan adopted by the appropriate governing body.
- (m) Vegetation removal and/or development within the area authorized under the provisions for a Modification to Natural Features Standards (BCC 88.800).

[Ord 2005-0211]

### **88.450 Creation of Lots and Parcels**

Parcels or lots resulting from subdivisions, partitions and property line adjustments shall be designed such that existing and future uses and development activities allowed by the underlying zone can be carried out in conformance with the regulations contained in this chapter. Creation of lots or parcels that do not meet this requirement are prohibited, with the exception of lots or parcels created for public park or open space

purposes. [Ord 2005-0211]

## **MODIFICATION TO NATURAL FEATURES STANDARDS**

**88.800 Modification Options.** On a lot or parcel containing Natural Features identified on the Corvallis Urban Fringe Natural Hazards Map and/or Riparian Corridors and Wetlands Map, the following two options are available to ensure that parcels or lots reasonably expected to be buildable can indeed be built upon:

- (1) **Non-Discretionary “Constraint-Free Area”.** By means of the following procedure, a property shall be assured a minimum area free from the regulatory development constraints of the Natural Features provisions and building setback requirements. This procedure shall be non-discretionary. Designation of a Constraint-Free Area on a property may be approved by the Planning Official upon receipt of a plot plan and other documentation sufficient to demonstrate compliance with this subsection. Such approval is not a land use decision and shall not be subject to appeal.
  - (a) All legally created, residentially zoned parcels that include Natural Features shall be entitled to a minimum area free from the development prohibitions of Natural Features regulations, thus allowing building construction, landscaping, driveway, and other development. The Minimum Constraint-Free Area (MCFA) assured under this section is defined as 10% of parcel or lot area plus the area of the approved initial and repair septic system drainfields or, if no site feasibility approvals have been issued by the Benton County Environmental Health Division or the Oregon Department of Environmental Quality, two times the area containing the existing drainfield lines buffered by 10 feet. The minimum MCFA shall be 5,000 square feet and the maximum 1 acre. (Note that some of the Development Code provisions for some Natural Features require the septic system drainfield to be located outside of Natural Features unless the only approvable area is with the Natural Feature area.)
  - (b) If an area equal to or exceeding MCFA is currently free of Natural Feature and building setback regulatory constraints, no encroachments into Natural Features shall be authorized by this subsection and development activities that are otherwise allowed by this Code are allowed in all areas outside of Natural Features.
  - (c) If the only viable access to an adequate constraint-free area requires encroachment into Natural Features, such encroachment shall be allowed if it is less than or equal to the MCFA.
  - (d) If the combination of Natural Features development restrictions imposed by this chapter and building setbacks required by the underlying zone results in an area less than the MCFA determined in subsection (a) on a given lot or parcel, then:
    - (A) The building setbacks of the underlying zone shall be reduced to the extent necessary to provide the MCFA determined in subsection (a) but shall not be reduced to less than half of their original dimension.
    - (B) If the MCFA is not attained through subsection (A), then the constraint-free area may encroach into Natural Features on the site pursuant to subsections (3) through (9) below. Such encroachment shall be the minimum necessary to attain MCFA.
    - (C) All activities otherwise prohibited by BCC 83.505 and BCC 88.100 through 88.350 shall be contained within the Constraint-Free Area.
  - (e) Areas containing slopes of 15% to 35% shall not be considered restricted from development for purposes of subsection (d) above unless a geotechnical site assessment and/or geotechnical report determines the area is inappropriate for development.
- (2) **Discretionary Modification of Standards.** For cases where a property owner desires a larger or differently configured Constraint-Free Area than the MCFA of subsection (1) allows, the property owner may apply for a Discretionary Modification of Standards. This shall be a land use decision

subject to the requirements of Chapter 51.

- (a) The Planning Official may modify or reduce any of the restrictions within the Natural Features regulations through the provisions of this section. The decision to grant the modification shall be based on the following findings:
    - (A) The property owner shall demonstrate that the Natural Features provisions have rendered a lawfully created lot or parcel undevelopable for the primary use allowed in the base zone. Primary use is defined as follows: in a residential zone, a primary use is a dwelling; in a commercial or industrial zone, a primary use is any use that is allowed outright, could be reasonably expected considering site characteristics, and will have a development footprint smaller than the lesser of 4 acres or 50% of the square footage of the subject property.
    - (B) The modification requested shall be the minimum deviation from the Natural Features regulations necessary to enable the lot or parcel to be reasonably developable for the primary use allowed in the base zone;
    - (C) The applicant shall demonstrate that other locations outside of mapped Natural Features are not practicable. The analysis of other locations shall include areas normally off-limits due to setbacks or other non-Natural Features requirements of the Development Code.
    - (D) In considering the modification request, the Planning Official shall consider modifications to other restrictions under the Development Code, including but not limited to yard setbacks, and shall, if the above criteria are met, approve the modification(s) that causes the least impact to mapped Natural Features while not altering the essential character of the neighborhood nor substantially or permanently impairing the appropriate use or development of adjacent property.
  - (b) Any encroachment into Natural Features authorized through this subsection shall follow the prioritization established in subsection (3), and comply with subsections (4) through (9), below.
- (3) If, pursuant to the criteria of subsection (1) or (2) above, encroachment into a Natural Features area is allowed, such encroachment shall comply with the following:
- (a) The encroachment shall be accomplished in the following order and to the minimum extent necessary to achieve the MCFA or approved Discretionary Modification. All available areas within a given category shall be utilized before moving down the list to the next category.
    - (A) Encroachment for Access: The minimum encroachment necessary to provide access to a building site that does not impact Natural Features.
    - (B) Floodway Fringe;
    - (C) Systems-Critical Wetlands outside Riparian Corridors;
    - (D) Riparian corridors of the Marys and Willamette Rivers;
    - (E) Riparian wetlands of the Marys and Willamette Rivers
    - (F) Riparian corridors of local streams draining more than 160 acres;
    - (G) Riparian wetlands of local streams draining more than 160 acres;
    - (H) Riparian corridors of local streams draining 160 acres or less;
    - (I) Riparian wetlands of local streams draining 160 acres or less;
  - (b) **Off-Limits Areas.** The following areas shall not be authorized for development activities due to extreme hazard and/or very high potential for development to impact other properties or the environment:

- (A) Within 20 feet of the top-of-bank in riparian corridors;
  - (B) 0.2-ft. Floodway.
  - (C) Slopes exceeding 35%;
  - (D) Landslide hazard areas, in the absence of a geotechnical report concluding that the risk of landslide is negligible.
- (4) Conditions of approval pursuant to BCC 53.220 may be imposed to mitigate adverse impacts that could result from granting the Modification.
  - (5) Encroachment into Natural Resource areas shall be conditioned upon the applicant implementing and maintaining a restoration/mitigation plan, approved by the Planning Official upon consultation with the Oregon Department of Fish and Wildlife, to offset the impact of the use allowed within the Natural Resource area. The mitigation/restoration plan shall restore areas similar to those impacted by development activities at a ratio of 2:1 (restored area:impacted area). If the restoration cannot be accomplished on-site it shall occur within the same watershed as the site.
  - (6) Encroachment into Natural Hazard areas shall be designed and constructed pursuant to the recommendations of required geotechnical reports and engineering design.
  - (7) If a Modification is approved to allow an on-site sewage disposal system in a Natural Feature area, the system shall be a sand filter system that provides the least disruption and occupation of surface area and vegetation.
  - (8) A Modification to Natural Features Standards shall not be granted for a lot or parcel created or modified after October 6, 2005.
  - (9) Unless otherwise specified at the time of approval, a modification approved under subsection (3) shall be valid for one year.

[Ord. 2005-0209; 2005-0210]

## **ENFORCEMENT**

### **88.900 Enforcement and Corrective Action.**

- (1) **Purpose:** Benton County encourages property owners to maintain natural features and accordingly provides incentives through the bonus parcel allowances of Chapters 64 and 100. At the same time, failure by a property owner to comply with the mandatory provisions of the natural features program may necessitate enforcement and corrective action pursuant to this section. The primary focus of enforcement and corrective action is not punishment but rather to restore lost functioning and redress negative impacts resulting from the violation.
- (2) Violations of the provisions of this chapter shall be corrected by meeting the standards of the applicable section below. These correction provisions shall be observed whether or not any civil citation is issued pursuant to Benton County Code Chapter 31. Failure to comply with the required correction provisions shall be considered additional violation(s) of the Development Code.
  - (a) Removal of riparian/wetland vegetation or ground disturbance in riparian/wetland areas in violation of the Development Code shall be remedied by the property owner restoring the impacted area, plus an additional area equal to the area disturbed. The additional area is necessary because restoration is not always completely successful, and takes many years to reach replacement of the functions lost by disturbance. The restoration plan shall be approved by the Planning Official, who, through consultation with Oregon Department of Fish and Wildlife or other appropriate agency staff, shall determine whether the plan is adequate for restoring riparian and/or wetland functions to a level that would reasonably be expected at the site. Restoration shall be initiated within 90 days of the violation and within the period from

October 1 to May 1 (the 90-day period may be extended to ensure that planting occurs at the first reasonable opportunity in this period). Until restored vegetation has become established, the property owner shall ensure erosion control measures are in place during rainy periods.

- (b) Replanting required by subsection (a) shall meet the following standards:
  - (A) Replanting shall exclusively utilize native plants listed on the City of Corvallis Native Plant List as appropriate for the proposed location.
  - (B) Plantings shall, at a minimum, replace the ecological-function category of the removed plants.
  - (C) The restored areas shall be maintained until vegetation becomes fully established, but for a period of no less than five years, during which time invasive and non-native species shall be kept out, plantings shall be irrigated as necessary, and any plants that die shall be replaced.
- (c) Excavation or removal of vegetation within steep slope hazard areas or landslide hazard areas in violation of BCC 88.100 or 88.200 shall require the property owner to obtain a geotechnical site assessment and geotechnical report and effect any and all remedial action recommended in the geotechnical report for restoring or enhancing the immediate and long- term stability of the affected area. In the case of vegetation removal, the geotechnical report shall specify appropriate replanting standards, including species, density, location, and maintenance requirements. Planted species shall be native species listed on the Corvallis Native Plant List. If the geotechnical report specifically recommends against planting trees, such recommendation shall override the above standards.
- (3) The Planning Official, or the Planning Official’s designee, shall have the authority to issue a “Stop-Work Order”. Such order may be issued when a violation of the provisions of Chapter 88 is occurring or has occurred and there is reason to believe additional activity will exacerbate the violation. A Stop-Work Order shall be posted at the site of the violation and shall be followed with a letter of explanation to the property owner. Failure to halt activity upon the posting of a Stop- Work Order shall be a further violation of the Benton County Code and shall result in an additional fine of \$500 per day for each day that activity occurs after posting of the order.

[Ord. 2005-0209; 2005-0210]

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# Chapter 89

## Historic Preservation

### ADMINISTRATION

**89.005 Purpose.** This Chapter is intended to encourage continued use, rehabilitation, and preservation of significant historic sites and structures. [Ord 90-069, Ord 91-0080]

### HISTORIC RESOURCES COMMISSION

#### **89.010 Historic Resources Commission Established.**

- (1) A Benton County Historic Resources Commission (HRC) is hereby created.
- (2) The Historic Resources Commission shall:
  - (a) Review and maintain the Benton County Cultural Resources Survey as the depository of information about historic resources in Benton County, and as the primary source of historic resources for inclusion on the Benton County Register of Historic Resources, and submit such information to the State Historic Preservation Officer for inclusion on the State Wide Inventory;
  - (b) Receive and take action on requests to include a potential historic resource on, or remove a listed historic resource from, the Benton County Register of Historic Resources;
  - (c) Review and act on National Register of Historic District applications;
  - (d) Review and make recommendations to the County Development Department and Planning Commission on proposed land use actions and programs that may impact resources listed on the Benton County Register of Historic Resources;
  - (e) Review and make decisions on demolition permits and building permits for exterior alteration of structures listed on the Benton County Register of Historic Resources;
  - (f) Promote the use and preservation of historic resources by developing, in cooperation with other concerned parties, programs for the education, pleasure, energy conservation, housing, and public welfare and benefit of the County, and provide technical assistance to owners wishing to improve their historic properties;
  - (g) Obtain and maintain up-to-date information on private, state and federal historic preservation organization and agency activities, seek to establish and maintain local programs that are consistent with these activities, and create and maintain a current reference library at the Benton County Historical Museum for individual use and consultation;
  - (h) Recommend local historic resources for nomination to the National Register of Historic Places nomination;
  - (i) Seek funding and professional assistance for historic resource survey and planning, and for repair, maintenance, rehabilitation, or restoration of historic resources;
  - (j) Promote public awareness and interest in Benton County historic resources; and
  - (k) Perform other duties relating to historic resources upon request of the Benton County Board of

Commissioners. [Ord 85-003, 85-026, Ord 90-069]

## **BENTON COUNTY REGISTER OF HISTORIC RESOURCES**

**89.205 Creation of Register.** The Benton County Register of Historic Resources is hereby created and recognized as the official County list of property that possesses cultural and historic values worthy of preservation. The purpose of the Register is to provide additional protection and additional incentives to preserve significant historic structures. [Ord 85-003, 85-026, Ord 90-069]

**89.210 Location of Register.** The Register shall be maintained and located at the Benton County Development Department. A copy of the Register shall be located at the Benton County Historical Society Museum. [Ord 85-003, ORD 90-069, Ord 91-0080]

### **89.215 Procedure for Placement of Historic Resource on Register.**

- (1) A site or structure may be considered for placement on the Benton County Register of Historic Resources:
  - (a) Upon application of an owner of a potential historic resource;
  - (b) Upon determination by the Historic Resources Commission that an historic resource should be reviewed for inclusion on the Register to comply with the requirements of Statewide Planning Goal 5; or
  - (c) Upon petition by a representative of an affected state agency or by any member of the public and with the endorsement of a majority of members of the Historic Resources Commission, for the review of any structure or site not reviewed by the Commission pursuant to BCC 89.215(2).
- (2) Placement of a property on the Register after July 1, 2000 shall only occur if:
  - (a) The property owner signs an affidavit of consent to have the property listed; and
  - (b) Signs a deed covenant to be recorded into the County Deed Records, binding on the current property owner and the owner's successors in interest, agreeing to retain the historic designation for a period of at least 20 years.
- (3) If the property owner does not consent to the historic designation, the property shall not be listed on the Register. In such case, the County shall not issue any permits for demolition or alteration of the property for 120 days from the date of objection. [Ord 91-0080; 2000-0161]

### **89.220 Sites on the Inventory of Historic Resources.**

- (1) The Historic Resources Commission (HRC) shall review all the structures and sites on the Benton County Inventory of Historic Resources, contained in the Open Space Scenic and Cultural Resource background Report of the Benton County Comprehensive Plan to determine compliance with the requirements of BCC 89.230. The Commission shall conduct the review of site and structures on the inventory in accordance with the procedures contained within BCC 89.225.
- (2) The Goal 5 review process contained in BCC 89.225 shall be completed prior to or concurrent with a review for exterior alteration or demolition of any site on the Benton County Inventory of Historic Resources. This includes sites classified as significant resources (Goal 5 classification "1C") on the Inventory. [Ord 93-0101]

### **89.225 Procedures for Notice, Hearings, and Findings.**

- (1) The notice procedures contained in BCC 51.610 through 51.615 shall be followed for public hearings before the HRC to consider placing a site or structure on the Register.
- (2) Public Hearings for placement of a site or structure on the Register shall be conducted in accordance with BCC 51.705 through 51.725.
- (3) The HRC shall make written findings supporting its decision based upon the review criteria contained in BCC 89.230.
- (4) Notice of a decision of the HRC shall be provided in accordance with BCC 51.625.
- (5) Following expiration of the appeal period, the Planning Official shall provide for recording a notice in the County Deed Records indicating placement of a site or structure on the Register and a brief summary of requirements provided by BCC 89.305 to 89.510. [Ord 91-0080]

**89.230 Review Criteria.**

- (1) A site or structure shall be eligible for placement on the Register if the resource is adequately identified and described by existing data sources or other information provided with the petition and the preponderance of evidence demonstrates that the site or structure:
  - (a) Is at least fifty (50) years old, and includes identifiable integrity of location, design, setting, materials, workmanship, feeling, or association that reflects the significance of the property; and
  - (b) Is associated with events that have made a significant contribution to the broad patterns of history of Benton County, the region, the State or the nation; or
  - (c) Is associated with the lives of persons significant in this history of Benton County, the region, the states or the nation; or
  - (d) Embodies distinctive characteristics of a type, period, or method of construction, or possesses high artistic values, or represents a significant and distinguishable entity even though components may lack individual distinction; or
  - (e) Represents types or styles of construction that were once common and now are among the last examples surviving in the County, the region or the State; or
  - (f) Has yielded or may be likely to yield, information important in prehistory or history.
- (2) If the HRC determines that a resource is eligible for placement on the Register pursuant to Sub-section 1 of this Section, the HRC shall consider potential conflicting uses, which if allowed could negatively impact the resource, pursuant to Statewide Planning Goal 5. The Economic, Social, Environment and Energy Consequences (ESEE) of the conflicting uses shall be identified and evaluated to determine if conflicting uses should be limited or whether conflicting uses shall be fully allowed. If the conflicting use is found to have a higher value as evident in the analysis of the ESEE consequences, the conflicting use may be allowed fully in accordance with Statewide Planning Goal 5 and the site or structure under review shall not be placed on the Register. [Ord 85-003, 85-026, Ord 90-069, Ord 91-0080]

**89.235 Removal of Resource from Historic Register.**

- (1) If an historic resource has been demolished or destroyed, the HRC may remove the resource from the Register without a hearing. In addition, if a destroyed resource site has received approval for a special use pursuant to this chapter, the HRC shall make a written request to the Planning Official to invalidate the approval.
- (2) Requests for removal of an historic resource from the Register for any reason other than demolition or destruction shall be processed through the procedure provided in this chapter. To remove an historic resource from the Register, the HRC must determine that the findings made pursuant to BCC 89.230 for

inclusion on the Register no longer apply.

- (3) Notwithstanding (2) above, a property placed on the Register prior to July 1, 2000, shall be removed from the Register upon request of the property owner(s).
  - (a) The current owner shall submit a written request to the Planning Official for the property to be removed from the Register, stating that the historic designation was imposed on the property.
  - (b) Upon receipt of a request that complies with BCC 89.235(3)(a), the County shall remove the historic designation.
  - (c) If a property is removed from the Register by the process in this subsection, the County shall not issue any permits for demolition or alteration of the subject property for at least 120 days from the date the property owner requests removal of the property from the Register. [Ord 85-003, 85-026, Ord 90-069, Ord 91-0080, 2000-0161]

**89.240 Appeals.** A decision made by the HRC to approve or deny inclusion of an historic resource on the Register or to remove an historic resource from the Register may be appealed to the Board of Commissioners pursuant to BCC 51.805 through 51.825. [Ord 85-003, Ord 90-069, Ord 91-0080]

## **EXTERIOR ALTERATION OR DEMOLITION OF A STRUCTURE ON THE COUNTY REGISTER**

**89.305 Permits Required.** A permit is required for the exterior alteration, demolition or removal of any structure listed on the Benton County Register of Historic Resources, or any buildings, structures, objects, sites, or districts listed in the National Register of Historic Places, or within approved national register historic districts pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).. For the purpose of this section "exterior alteration" includes any construction activity which would affect the character or integrity of a site or structure. Ordinary maintenance of a site or structure, including cleaning, painting, and minor repairs which do not require the installation or replacement of exterior building materials are exempt from exterior alteration review requirements. The construction of additions, changes in an exterior facade including the replacement of doors or windows and the replacement of other architectural features are subject to review under this section. [Ord 85-003, Ord 90- 069, Ord 91-0080, 2000-0161]

**89.310 Exception to Permit Requirements.** Nothing in this section prevents the construction, reconstruction, alteration, restoration, demolition, or removal of any exterior architectural feature or any property on the Register when the Building Official, Fire Marshall, or Rural Fire District Chief determines that such emergency action is required for the public safety due to unsafe or dangerous condition. Prior to such emergency action, the Chairperson of the Historic Resources Commission shall be notified. [Ord 85-003]

### **89.315 Permit Process.**

- (1) Application for a permit to alter or demolish a structure listed on the Register shall be on such forms and in such detail as prescribed by the Planning Official. The Planning Official shall schedule a public hearing on the request at the next available meeting of the Historic Resources Commission.
- (2) Upon receipt of a completed application, the Planning Official shall refer the request to all appropriate County agencies, the County Building Official, the chairperson of the Historic Resources Commission, and the chairperson of any city-appointed historic preservation group, if the request is located within an urban growth boundary.
- (3) If the site or structure is listed on the National Register of Historic Places and the owner receives tax

benefits under the provisions of ORS 358.475, the Planning Official shall also refer such applications to the State Historic Preservation Office.

- (4) Public notice procedures in BCC 51.610 to 51.615 shall be followed for public hearings before the Commission.
- (5) The hearing shall be conducted in accordance with BCC 51.705 through 51.725. [Ord 85-003, Ord 90-0069, Ord 91-0080]

### **89.320 Review Criteria for an Alteration Permit.**

- (1) The Historic Resources Commission shall review an application for exterior alteration pursuant to the following guidelines:
  - (a) The removal or alteration of any historic material or distinctive architectural feature should be avoided.
  - (b) Alterations that have no historical basis, or which seek to create an earlier or later appearance inconsistent with the age or type of the structure *sought* be altered, should be discouraged.
  - (c) Changes in a structure which have taken place over time and which have acquired significance in their own right within the meaning of BCC 89.230(1), should be protected.
  - (d) Deteriorated architectural features should be repaired rather than replaced. In the event that replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities.
  - (e) Repair or replacement of missing architectural features should be based on accurate duplication of the feature, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of architectural elements from other structures.
  - (f) Contemporary design for alterations or additions to existing properties should be discouraged unless such alteration and additions will not destroy significant historical, architectural or cultural material and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.
  - (g) New additions, or alterations should be done in such manner that if the additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.
  - (h) Alterations or additions should not significantly alter the character of the site or potential archaeological resource.
- (2) A decision by the Historic Resources Commission to approve, approve with Conditions, or deny an application for an exterior alteration permit shall be based upon the following criteria:
  - (a) The extent to which the state of repair of the structure creates a need for the alterations. An alteration required because of a defect or deterioration in the structural or environmental systems of the historic resource shall be given greater deference than an alteration for cosmetic purposes.
  - (b) The cost of complying with the guidelines in Subsection 1 as compared to the cost of the alteration as proposed by the applicant shall not cause an undue hardship on the applicant; and
  - (c) The significance and integrity of the historic resource, and the degree of impact of the proposed alteration.
- (3) The Historic Resources Commission may attach conditions to the approval of an alteration permit in order to mitigate the impact of an alteration on an historic resource. Conditions may address, but shall not be limited to:

- (a) Design;
  - (b) Material;
  - (c) Location;
  - (d) Scale;
  - (e) Size; and
  - (f) Style.
- (4) If a property owner removes a property from the Register by means of BCC 89.235(3), the Historic Resources Commission shall not issue a permit for any alteration for at least 120 days from the date the property owner requests removal of the property from the Register.

[Ord 91-0080, 2000-0161]

**89.325 Review Criteria for a Demolition Permit.**

- (1) A decision by the Historic Resources Commission to approve, approve with conditions, delay a final decision or deny an application for demolition shall be based upon the following criteria:
- (a) The state of repair of the structure;
  - (b) The rehabilitation costs;
  - (c) The cultural or historic significance of the resource, including assessment of such items as integrity of location, design, setting, materials, workmanship, feeling, or association; and
  - (d) The economic, cultural, and energy consequences of demolition of the structure.
- (2) The Historic Resources Commission may order that action on a demolition request be deferred for a period not to exceed 150 days. A decision to defer action on a demolition request shall be based upon an identified course of action which provides for the investigation of alternatives to demolition, documentation of the property prior to demolition or other appropriate mitigative measures. During this period, the HRC may attempt to determine if public or private acquisition and preservation is feasible, or if other alternatives could be carried out to prevent demolition or removal of the structure. At the end of the delay period, the HRC shall make a final decision within ten (10) working days. Approval, or approval with conditions, shall only be made prior to the expiration of a 150 day waiting period when the Building Official and Fire Marshall or Rural Fire District Chief have determined that the demolition request is necessary due to applicable building, fire, life, and safety codes.
- (3) If a property owner removes a property from the Register by means of BCC 89.235(3), the Historic Resources Commission shall not issue a demolition permit for at least 120 days from the date the property owner requests removal of the property from the Register. [Ord 85-0030, Ord 90-0069, Ord 91-0080, 2000-0161]

**89.330 Appeals.** A decision of this Historic Resources Commission decision on a request for exterior alteration or demolition of a site or structure on the Register may be appealed to the Board of Commissioners pursuant to BCC 51.805 - 51.825. [Ord 85-003, Ord 90-069, Ord 91-0080]

**SPECIAL USES ALLOWED FOR REGISTER PROPERTIES**

**89.400 Home Occupation.**

- (1) All uses permitted under ORS 215.448 (Home Occupation) shall be reviewed by the Historic Resources

Commission when such uses are proposed for a structure listed on the Benton County Register of Historic Resources. The HRC shall recommend approval, approval with modifications or denial of application to the Planning Official for final approval.

- (2) The decision to approve a Home Occupation proposed for a structure on the Register shall be based on compliance with the following criteria:
  - (a) The home occupation shall be operated by a resident of the property on which the business is proposed to be located;
  - (b) The home occupation shall be conducted in the dwelling or other existing buildings;
  - (c) The home occupation shall employ no more than five full-time or part-time persons in any work shift;
  - (d) A minimum of two parking spaces or as otherwise determined to be required by the use shall be provided on-site for the home occupation;
  - (e) The home occupation shall not seriously interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located;
  - (f) The home occupation shall be compatible with the historic and architectural integrity of the structure and surrounding site;
  - (g) The home occupation shall not destroy or seriously detract from the distinguishing character or qualities of the structure and surrounding site;
  - (h) The location, size, design, and operating characteristics of the home occupation shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
  - (i) The proposed site of the home occupation shall have adequate services and physical characteristics, including water supply, sewage disposal, access (ingress and egress) and parking.
- (3) Home occupations located in structures on the Register shall be reviewed by the Planning Official every twelve (12) months following the date the use is approved. The use may continue if it complies with the conditions of its approval. The approval of a home occupation shall not be used as sole justification for a zone change; nor shall an approval of a home occupation permit construction of any new structure that would not otherwise be allowed in the zone in which the use is to be established.
- (4) All signs shall be subject to review and recommendation by the Historic Resources Commission, and shall not detract from the historic or architectural integrity of the site, considering the proposed material, design, size and location of such signs. [Ord 26, Ord 90-0069]

#### **89.410 Special Uses.**

- (1) The following special uses may be allowed by conditional use permit pursuant to BCC 53.205 to 53.235 for a structure listed on the Benton County Register of Historic Resources in any zone except for resource zones, subject to review by the Historic Resources Commission. The Historic Resources Commission shall recommend approval, approval with modifications, or denial of application to the Planning Official who shall make the final decision.
  - (a) Bed and breakfast accommodations.
  - (b) Eating establishment.
  - (c) Arts and craft galleries.
- (2) In addition to conditional use permit criteria, the decision to recommend or grant a special use shall be

based on findings that demonstrate compliance with the following criteria:

- (a) The proposed use will be conducted in the dwelling or existing buildings;
  - (b) The proposed use will not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located.
  - (c) The proposed use will be compatible with the historic and architectural integrity of the structure and surrounding site;
  - (d) The proposed use will not destroy or detract from the distinguishing character or qualities of the structure and surrounding site;
  - (e) The location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
  - (f) The proposed site has the physical characteristics needed to support the proposed use, such as, but not limited to, suitability for necessary sewage treatment system, adequacy of quantity and quality of water and adequacy of access (ingress and egress) and parking.
- (3) Special uses shall be reviewed by the Planning Official every twelve (12) months following the date the use is approved. The use may continue if it complies with the conditions of its approval. The approval of a special use shall not be used as justification for a zone change; nor shall an approval permit construction of any new structure that would not otherwise be allowed in the zone in which the use is to be established.
- (4) All signs shall be subject to review and recommendation by the Historic Resources Commission, and shall not detract from the historic or architectural integrity of the site, considering the proposed material, design, size and location of such signs. [Ord 26, Ord 90-0069]

## **LAND PARTITIONS; PROPERTY LINE ADJUSTMENTS**

**89.500 Land Partitions and Property Line Adjustments Involving Historic Resources.** An owner of a property on the County Register located in any zone may apply to separate the historic site from land in the same ownership pursuant to BCC 89.510 without a hearing, unless a hearing is otherwise required to comply with any other land partition provision of this code. Requests for a land partition or property line adjustment to separate an historic structure or site from adjacent land in the same ownership shall be referred for review by the Historic Resources Commission. The Historic Resources Commission shall recommend approval, approval with modifications, or denial to the Planning Official or Planning Commission, who shall make the final decision. [Ord 26, Ord 90-0069, Ord 96-0118]

**89.505 Waiver of Minimum Parcel or Lot Size.** Withstanding any minimum parcel or lot size requirements specified by an adopted Comprehensive Plan or requirements of the Statewide Planning Program, a proposed parcel or lot containing a historic site or structure need not comply with the minimum parcel or lot size required by the assigned zoning. The acreage or area contained within the proposed parcel or lot shall be sufficient to comply with applicable criteria in BCC 89.510. [Ord 90-0069, Ord 91-0080, Ord 96-0118]

**89.510 Criteria for Land Partitions and Property Line Adjustments.** The decision to approve a land partition or property line adjustment involving an historic resource shall be based on findings which demonstrate that the proposed action:

- (1) Includes a structure or site listed on the County Historic Register;



- (2) Is compatible with the historic and architectural integrity of the historic structure or site;
- (3) Does not destroy or detract from the distinguishing character or qualities of the historic structure or site;
- (4) Is of a size possible to serve the interests of the affected property owner and to adequately protect the integrity of the historic structure or site;
- (5) Has no substantial adverse effect on the livability or appropriate development and existing uses of abutting properties and the surrounding area;
- (6) Incorporates adequate physical characteristics needed to comply with setback (if feasible), septic, water and road standards contained in this code;
- (7) Is appropriate to provide for the preservation and protection of a significant historic structure or site; and
- (8) Complies with appropriate criteria in BCC Chapters 95 to 98. [Ord 26, Ord 90-0069, Ord 96-0118]

# Chapter 91

## Specific Use Standards

**91.005 Purpose.** A variety of land uses are permitted in more than one zone. It is the purpose of this chapter to provide uniform standards for certain land uses, with the standards applicable to all zones in which such uses are allowed. These standards shall be applied in addition to all other standards and criteria appropriate to the review process required by the zone. [Ord 90-0069]

### ACCESSORY DWELLING UNITS

**91.050 Accessory Dwelling Unit Standards.** Where permitted by zoning within urban growth boundaries, every accessory dwelling unit (ADU) shall:

- (1) Be allowed in conjunction with and on the same lot or parcel as one legally established detached single-family dwelling. The single-family dwelling must be established prior to, or concurrent with, the establishment of the accessory dwelling unit or, if the existing single-family dwelling is demonstrated to meet the standards of this section for an accessory dwelling unit then it may be so designated and establishment of a single-family dwelling may be allowed. In any event, a maximum of one ADU is allowed per single-family dwelling;
- (2) Be constructed or renovated to comply with all applicable building code requirements, and shall comply with all other applicable regulations for a dwelling, including but not limited to floodplain provisions and setback requirements;
- (3) Contain no more than 900 square feet of habitable space. A single-car garage (no larger than 300 square feet in size) is allowed in conjunction with an ADU, but may not be used for human habitation. The garage area does not count towards the 900 square foot maximum size allowed for the ADU.
- (4) Contain no more than two bedrooms and two bathrooms. For the purposes of this code, a bathroom is defined as a room containing, at minimum, a sink and a toilet; a bedroom is defined as a room or area designed for sleeping, in compliance with all applicable building code requirements for such rooms or areas. A studio space shall be considered a bedroom if it has the components of a bedroom;
- (5) Be served by either:
  - (a) A septic system; whether existing or new, the system shall meet all applicable requirements of Benton County Environmental Health and the Oregon Department of Environmental Quality (DEQ) [Note that DEQ rules may prohibit additional septic system loading if municipal sewer is located within a specified distance of the property.]; or
  - (b) A community/municipal sewer system, in which case the applicant shall submit evidence that the service agency is mutually bound and able to serve the accessory dwelling unit.
- (6) Be provided with water from an approved source, consistent with BCC 99.805. Well or spring water serving the ADU must comply with the well log and water quality requirements of BCC 99.810(1) and (2). A spring shall comply with the provisions of BCC 99.820 with the exception that the minimum gallons per minute required of the flow test described in BCC 99.820(4)(a) shall be increased by 50% if both the single-family dwelling and the ADU will be served by the spring. For a well, a minor pump test is required, consistent with BCC 99.845. If the ADU will be served by a separate well than the single-family dwelling, the pump test shall demonstrate compliance with the standards in BCC 99.845(1). If a single well is proposed to serve both the single-family dwelling and the ADU, the pump test shall demonstrate compliance with the following modified standards for BCC 99.845(1):

- (a) Minimum supply = 1.5 gpm
- (b) Minimum required to avoid storage requirement = 7.5 gpm
- (c) If storage is required, storage within the tank and well must meet the following requirements:

1.5 – 2.99 gpm	No less than 2,250 gallons
3 – 4.49 gpm	No less than 1,500 gallons
4.5 – 7.49 gpm	No less than 1,000 gallons

- (7) Share the same road approach as the primary dwelling on the property.
- (8) Be located no more than 200 feet from the single-family dwelling unit on the site, as measured horizontally from structural wall to structural wall. Attached garages within 200 feet of each other may be used to meet this requirement;
- (9) Access to the ADU, and construction of the ADU, must comply with applicable Fire District requirements;
- (10) A manufactured home may be utilized as an ADU, if in compliance with all applicable standards;
- (11) Neither the single-family dwelling nor the ADU may be utilized for short-term accommodation purposes. Short-term accommodations are defined as lodging agreements for a period of less than one month;
- (12) An ADU is allowed in addition to a temporary medical hardship dwelling associated with the single-family dwelling, if all applicable requirements are met for all dwellings on the site;
- (13) Road improvement requirements consistent with the requirements of BCC Chapter 99 shall be met by the property owner, proportionate to the transportation impacts of the ADU;
- (14) The applicant for an ADU shall submit an urbanization plan, demonstrating that the location and placement of the single-family dwelling and accessory dwelling unit on the subject property will not prevent achieving the minimum density designated by the respective city’s comprehensive plan. The urbanization plan shall show potential future roadways necessary to serve the development and potential lot configurations, and shall comply with natural features or natural hazard regulations on the site. All dwellings and all structures requiring building permits shall be placed within boundaries of the future parcels or lots shown on the urban conversion plan and shall meet urban setbacks of the respective city. The urban conversion plan shall be binding on future property owners, until such time as an alternative urban conversion plan is submitted by the property owner and approved by the County in consultation with the respective city, or the property is annexed to the city. In unusual circumstances, the urban conversion plan requirements may be modified by the Planning Official in consultation with the respective city.
- (15) The applicant for an ADU shall record a covenant to memorialize the requirements of Sections (3), (4), (12), and (15) above for current and future property owners.

[Ord 2018-0285, Ord 2018-0286, Ord 2020-0297]

## **CARE CENTERS**

**91.105 Day Care Center Standards.** Every day care center shall:

- (1) Comply with the occupancy requirements of the Benton County Building Code; and
- (2) Comply with State regulations for a day care center. [Ord 90-0069]

**91.110 Residential Facility Standards.** Every residential facility shall:

- (1) Comply with the occupancy requirements of the Benton County Building Code; and
- (2) Comply with State regulations for a residential facility. [Ord 90-0069]

**91.115 Standards for Residential Home.** Every residential home shall:

- (1) Be located in an existing single-family dwelling;
- (2) Comply with the occupancy requirements of the Benton County Building Code; and
- (3) Comply with State regulations for a residential home. [Ord 90-0069]

## **CEMETERIES**

**91.150 Cemetery Standards.** Every cemetery, whether private or public, where parcels or lots are offered for sale, except private family burial grounds, shall:

- (1) Comply with all State regulations for cemeteries; and
- (2) Comply with subdivision standards set forth in BCC Chapter 97. [Ord 90-0069]

**91.155 Standards for Private Family Burial Grounds.** Private family burial grounds may be allowed in any zone by conditional use permit approved by the Planning Commission. Lots or parcels shall not be offered for sale in a private family burial ground. Every private family burial ground shall:

- (1) Comply with State regulations for burial on private property;
- (2) Be located at least 100 feet from wells, springs, and other water sources used for drinking, fifty (50) feet from any stream, river, lake, or pond, and twenty-five (25) feet from property lines; and
- (3) Be documented by a Notice of Private Family Burial Grounds. A map shall accompany the Notice, showing the location of the burial grounds. The Notice shall indicate whether the gravesites are marked or unmarked. The Notice and map shall be recorded in the County Deed Records and the applicant shall pay the recording fees. [Ord 90-0069]

## **HOME OCCUPATIONS**

**91.200 General Provisions.**

- (1) In addition to the requirements of BCC 55.205, 60.205, or 89.400, every home occupation shall conform to the applicable standards of BCC 91.205, 91.210, or 91.215 as determined by parcel or lot size. [Ord 96-0119]
- (2) Home occupations in all zones shall not be approved for the commercial growing, processing, wholesaling or retailing of marijuana. [Ord 2015-0271]

**91.205 Home Occupations on a Parcel or Lot of Less Than One Acre.** Every home occupation shall conform to the following:

- (1) Occupy no more than twenty-five percent (25%) of the total floor area of the residence or 500 square feet of gross floor area of an accessory structure;
- (2) Not display any external evidence of an occupation outside the structure except as permitted for signs

under BCC 91.805 through 91.820;

- (3) Limit activities to the extent that traffic generated by the occupation shall not exceed ten (10) trips per day;
- (4) Produce no noise or obnoxious odors, vibrations, glare, or fumes detectable to normal sensory perception outside the structure;
- (5) Employ only members of the household; and
- (6) Home occupations conducted in an accessory structure require a permit that shall be renewed every two years. [Ord 96-0119]

**91.210 Home Occupation on a Parcel or Lot of One to Five Acres.** Every home occupation shall conform to the following:

- (1) Occupy no more than twenty-five percent (25%) of the total floor area of the residence or 750 square feet of gross floor area of an accessory structure;
- (2) Limit activities to the extent that traffic generated by the occupation shall not exceed ten (10) trips per day;
- (3) Produce no noise or obnoxious odors, vibrations, glare, or fumes detectable to normal sensory perception outside the structure;
- (4) Employ no more than one person in addition to those who reside in the household;
- (5) Home occupations with outside storage of materials, goods, supplies, or equipment are allowed provided it is screened from view of adjacent lands and rights-of-way; and
- (6) Home occupations conducted outside the home require a permit that shall be renewed every two years. [Ord 96-0119]

**91.215 Home Occupation on a Parcel or Lot Greater Than Five Acres.** Every home occupation shall conform to the following:

- (1) Occupy no more than twenty-five percent (25%) of the total floor area of the residence or 2000 square feet of gross floor area of an accessory structure;
- (2) Limit activities to the extent that traffic generated by the occupation shall not exceed ten (10) trips per day;
- (3) Produce no noise or obnoxious odors, vibrations, glare, or fumes detectable to normal sensory perception outside the structure;
- (4) Employ no more than two persons in addition to those who reside in the household;
- (5) Home occupations with outside storage of materials, goods, supplies, or equipment is allowed provided it is screened from view of adjacent lands and rights-of-way; and
- (6) Home occupations conducted outside the home require a permit that shall be renewed every two years. [Ord 96-0119]

**91.220 Exceptions to Dimensional Standards.** An exception to dimensional standards provided in BCC 91.205 to 91.215 to establish or expand a home occupation in excess of these standards up to fifty percent (50%) may be allowed by conditional use permit approved by the Planning Official. [Ord 90-0069]

**91.225 Effect of Deed Restrictions.** Issuance of a home occupation permit does not relieve the owner from provisions of any deed covenants, conditions, or restrictions on public record. The applicant shall identify and achieve compliance with all deed covenants, conditions, and restrictions prior to commencement of the home occupation. [Ord 90-0069]

**91.230 Building Permits Required for Home Occupation.** A building permit shall be obtained from the

Development Department for any required modification or addition to any structure or building used for a home occupation, or to the electrical, plumbing, or mechanical systems of any building or structure used for a home occupation, pursuant to the Benton County Building Code. [BCC 11.005 to 11.305] Such permit requirements are applicable to any change in occupancy of an accessory building to accommodate a home occupation. Building permits for construction of new, or expansion of existing structures occupied by a home occupation shall conform with standards contained in BCC 91.205 to 91.215. [Ord 90-0069]

## **JUNKYARDS**

**91.305 Junkyard Standards.** Every junkyard shall:

- (1) Provide at least a six (6) foot high sight-obscuring fence of wood or metal to enclose the entire portion of the site used for wrecking, storage, and display. If the fence is constructed of metal, it shall be painted one color only;
- (2) Store all items within the fenced area, and ensure that no items are piled any higher than the fence;
- (3) Provide for storage and off-site disposal of oil and other chemicals in conformance with standards established by the Oregon Department of Environmental Quality and the Environmental Protection Agency;
- (4) Include a forty (40) foot setback from any building to a parcel or lot line, and a fifty (50) foot setback from any crushing equipment to a parcel or lot line; and
- (5) Comply with all State requirements. A license is required for dealing in motor vehicles or dismantling motor vehicles. [Ord 90-0069, Ord 96-0118]

## **KENNELS**

**91.405 Permitted Locations of Kennels.**

- (1) A hobby kennel is allowed as an accessory use to a dwelling in any zone.
- (2) A commercial kennel is allowed as a home occupation in any zone.
- (3) A commercial kennel not provided in conjunction with a dwelling is allowed by conditional use permit approved by the Planning Official in the Rural Residential Zone (RR).
- (4) A commercial kennel may be allowed as an accessory use to a veterinary clinic or pet shop.
- (5) A commercial kennel may be established as a primary use only as allowed by the applicable zone. [Ord 26, Ord 90-0069]

**91.410 Kennel Standards.**

- (1) All animals shall be boarded within a building. The animals may be released outside in a fenced impoundment only during the hours of 6 a.m. to 9 p.m. The animals shall be confined within an enclosed building between the hours of 9 p.m. and 6 a.m. These requirements shall not apply to dogs used primarily as protection dogs (guard dogs, dogs for shepherding livestock, etc.) on land zoned Exclusive Farm Use (EFU), Multi-Purpose Agricultural (MPA), Forest Conservation (FC). The building shall comply with the Benton County Building Code pertaining to the structural integrity and ventilation associated with the structure. The building may be required to be sound- proofed to a level deemed appropriate by the Planning Official in consultation with the Building Official based upon the size of the kennel and adjacent land uses.
- (2) The kennel building and impoundment area shall be at least thirty (30) feet from a property line or forty-five (45) feet from a road. These setbacks may be reduced by thirty percent (30%) if a sight-obscuring fence or vegetation is present or installed. In no instance shall the building and impoundment



encroach on a setback established for a primary use for the zone in which the property is located.

- (3) All animal waste shall be disposed of in a sanitary manner as approved by the Benton County Sanitarian.
- (4) All dogs shall be licensed in compliance with BCC Chapter 9. [Ord 26, Ord 90-0069]

## **MANUFACTURED DWELLINGS**

**91.502 Use of Manufactured Dwellings.** Manufactured dwellings shall be used as single-family dwellings and shall not be used for commercial purposes, except as follows:

- (1) Manufactured dwellings may be used for purposes other than a single-family dwelling when the change of occupancy is approved by the Building Official in accordance with the provisions of the Oregon specialty codes and this Code. When the occupancy of a manufactured dwelling changes, the insignia shall be removed and returned to the Building Code Agency. Except as provided in (2) below, manufactured dwellings shall be used solely for the purpose of a residential dwelling in the Urban Residential Zone.
- (2) A portion of a manufactured dwelling may be used for an approved home occupation if the remainder of the structure is used as a single-family dwelling by the same person. [Ord 93-0097, Ord 97-0131]

**91.505 Minimum Standards for Manufactured Dwelling Placement.** Manufactured dwellings shall:

- (1) Bear an Oregon insignia of compliance. If the manufactured dwelling is placed in a residential zone it shall bear an insignia of compliance with the Manufactured Housing Construction and Safety Standards Code as of June 15, 1976;
- (2) Have the underfloor crawlspace entirely enclosed with a perimeter foundation, skirting or equivalent. The towing hitch shall be removed or concealed;
- (3) Be sited on the parcel or lot in conformance with all siting requirements, such as drainage and hillside placement, as stipulated in the Benton County Building and Plumbing Codes;
- (4) Be connected to an approved individual subsurface sewage disposal system, or to a sewage treatment facility approved by the Oregon Department of Environmental Quality. Prior to issuance of a manufactured dwelling placement permit for any manufactured dwelling not connected to a municipal or community sewer system, the applicant shall provide for the installation of a standard or alternative subsurface sewage disposal system which is adequate in size, location, design and specification to serve the proposed manufactured dwelling; and
- (5) Be anchored to a continuous permanent concrete, concrete block, or equivalent foundation built to County and State standards. [Ord 97-0131]

**91.510 Placement Standards for Manufactured Dwellings in the Urban Residential and Rural Residential Zones.** In addition to the minimum standards set forth in BCC 91.505, a manufactured dwelling placed in the Urban and Rural Residential Zones shall:

- (1) Contain at least 320 square feet of enclosed floor area in a unit;
- (2) Have a roof with a minimum pitch of three feet in height for each twelve feet in width (3/12);
- (3) Siding shall not be reflective, unpainted, or uncoated metal;
- (4) Have its foundation installed according to one of the methods listed in the most current Oregon Manufactured Dwelling Standard;
- (5) Bear certificates of compliance from the US Department of Housing and Urban Development and from the State of Oregon;
- (6) If sited within the Corvallis urban growth boundary have a garage or carport;

- (7) Have all wheels, axles, hitch mechanisms, and transient lights removed; and
- (8) Comply with every development standard to which a conventional single-family residential dwelling on the same parcel or lot would be subject. [Ord 90-0069, Ord 94-0104, Ord 97-0131, Ord 2018-0285, Ord 2018-0286]

**91.515 Placement Standards for Manufactured Dwellings in zones other than Rural Residential and Urban Residential.** In addition to the minimum standards set forth in BCC 91.505, a manufactured dwelling placed in zones other than Rural Residential and Urban Residential for the purpose of a residential dwelling shall contain more than 320 square feet of occupied space in a single, double, expanded, or multi-section unit, including those with add-a-room units. [Ord 90-0069, Ord 97-0131]

**91.520** Repealed. [Ord 90-0069, Ord 97-0131]

**91.525 Accessory Buildings.** Accessory structures to manufactured dwellings shall be designed and constructed in accordance with the applicable Oregon Specialty Codes, the Oregon Manufactured Dwelling Standards and this Code. [Ord 26, Ord 90-0069, Ord 97-0131]

**91.530 Alterations and Additions.** All alterations, repairs, conversions and remanufacturing of manufactured dwellings shall require building permits and shall be made in accordance with the Benton County Building Code requirements and the following applicable standards:

- (1) Additional skirting shall be made of materials similar to the siding of the manufactured dwelling, or of materials of good quality;
- (2) A building permit shall be obtained prior to construction of a carport;
- (3) A building permit shall be obtained prior to construction of a deck that exceeds thirty-one (31) inches in height from ground level;
- (4) All additions to a manufactured dwelling shall be constructed and finished in durable weather resistant materials comparable in quality to those used in the construction and finishing of the principle unit to which they are attached, and shall meet all Structural Specialty Code requirements. [Ord 26, Ord 90-0069, Ord 97-0131]

**91.535 Storage of Manufactured Dwellings.** A manufactured dwelling may be temporarily stored on a parcel or lot if the unit may be legally established on the parcel or lot in accordance with this code. The owner shall obtain a manufactured dwelling placement permit prior to storage. The period of storage shall commence the day the placement permit is issued and may not exceed ninety (90) days. Permission to store the unit does not vest the right for the unit to permanently occupy the property. [Ord 26, Ord 90-0069, Ord 96-0118]

**91.540 Temporary Manufactured Dwelling Permit During Construction.** The Planning Official may grant a permit for temporary placement of a manufactured dwelling in any zone for occupancy during the construction of a permitted dwelling. Such permits shall be issued concurrently with the building permits. Any manufactured dwelling used under these provisions shall be placed pursuant to the provisions of BCC 91.505(4) through (5), and shall be removed upon occupancy of the new dwelling, or within one year of issuance of such permits, whichever is sooner. [Ord 26, Ord 90-0069]

**91.545 Temporary Manufactured Dwelling for Hardship Purpose.**

- (1) A manufactured dwelling may be allowed as an accessory use to a dwelling in any zone in order to alleviate a medical hardship. The manufactured dwelling to be used must meet all applicable County and State health and building requirements, including Chapter 91, except that the additional placement standards of BCC 91.510 shall not apply. The manufactured dwelling shall be used in conjunction with a permanent residential structure on the same parcel. A bonafide medical hardship shall be substantiated by a statement from the attending physician that the manufactured dwelling is necessary to provide adequate and immediate health care for a relative who needs close attention and who would



otherwise be required to receive needed attention from a hospital or care facility. Tenancy of the manufactured dwelling shall be limited to a member or members of the property owner's immediate family or a person (and immediate family) who is directly responsible for care of the owner or members of the owner's immediate family.

- (2) Manufactured dwellings used for medical hardship purposes shall contain more than 320 square feet of occupied space and when sited in Rural Residential Zones shall bear an insignia of compliance with the Manufactured Housing Construction and Safety Standards Code as of June 15, 1976. [Ord 97-0131]

#### **91.550 Conditions of Approval for Hardship Dwellings.**

- (1) A temporary manufactured dwelling for hardship purposes shall be valid only for the owner(s) of the property. The manufactured dwelling shall be removed when the need to relieve a family hardship no longer exists, or upon sale, transfer or disposal of the property.
- (2) Approval of a temporary manufactured dwelling for hardship purposes shall be renewed annually by the applicant. To renew the hardship approval, the applicant shall submit to the Community Development Department a notarized statement attesting that either the hardship for which the manufactured dwelling was granted is still in existence; or the hardship no longer exists and the manufactured dwelling has been removed.
- (3) A temporary manufactured dwelling for hardship purposes shall be connected to an existing water supply and septic system, if authorized by the County Sanitarian. The County Sanitarian may inspect the septic system as allowed by State law and collect the appropriate fees for such inspection. Installation of a second septic system on the property to serve a hardship manufactured dwelling shall not constitute a vested right for a second permanent dwelling.
- (4) Temporary manufactured dwellings shall not be expanded or attached to a permanent structure.
- (5) The temporary manufactured dwelling shall be required to meet all setback requirements for the zone in which it is located.
- (6) A deed covenant recognizing the provisions of this section shall be signed by the property owner and recorded in the County Deed Records for the subject property prior to issuance of permits of placement of the dwelling. [Ord 26, Ord 90-0069, Ord 92-0092, Ord 97-0131]

**91.555 Mobile Home or Manufactured Dwelling Park Standards.** Every mobile home or manufactured dwelling park shall:

- (1) Require all manufactured dwellings to be placed in accordance with BCC 91.505;
- (2) Have the following space sizes: At least seventy-five percent (75%) of the spaces will be 5,000 square feet or larger; up to twenty-five percent (25%) of the spaces may be as small as 3,500 square feet. Only 5,000 square foot space or larger spaces will be allowed around the perimeter of the park;
- (3) Have all improvements set back a minimum of twenty-five (25) feet from a roadway, or fifteen (15) feet from a public right-of-way and eight (8) feet from rear and side setbacks;
- (4) Have two off-street parking spaces per manufactured dwelling space, or community parking for second vehicles;
- (5) Be developed in accordance with ORS Chapter 446 and OAR Chapter 918 Division 600;
- (6) Provide for internal pedestrian circulation separate from vehicular traffic;
- (7) Provide for the installation and maintenance of landscaping and vegetation of all areas not committed to parking, manufactured dwelling spaces, streets or buildings;
- (8) Allow accessory vehicles (boats, motor homes, etc.) to be parked only in a screened, protected community space;

- (9) Provide a minimum fifty (50) square foot enclosed storage building per manufactured dwelling parcel or lot; and
- (10) Be screened from streets and surrounding property by berms or landscaping or a combination thereof as necessary to provide a visual barrier at least five (5) feet in height along rear and side property lines and two (2) feet in height along front property lines. [Ord 26, Ord 90-0069]

**91.560 Development Plan Requirements.** The development plan for a proposed mobile home or manufactured dwelling park shall illustrate compliance with the standards set forth in BCC 91.555 and shall:

- (1) Demonstrate that municipal or public water supply system and sewage disposal system are available;
- (2) Demonstrate that present or planned expansion capacity of neighborhood schools will accommodate children from the park;
- (3) Show contour lines at two foot intervals. The source and accuracy of contour lines shall be specified;
- (4) Show the location, names, width, elevation and grades of existing and proposed streets in or adjacent to the proposed park;
- (5) Show the location of all areas subject to the base flood;
- (6) Show the location, width and purpose of all easements;
- (7) Show the location of all utilities including water, sewer, power, telephone, natural gas and/or cable television;
- (8) Include a proposed plan for storm water drainage;
- (9) Show the location and purpose of all common or public facilities;
- (10) Include a timetable for construction of all improvements; and
- (11) Address the impact of the proposed park on water, sewer, fire protection, law enforcement, schools, solid waste disposal and other services. [Ord 90-0069]

**91.565 Occupancy of Recreational Vehicles.** Recreational vehicles may be placed for temporary residential occupancy at one location as an accessory use only in any zone without permits for a period not to exceed thirty (30) days. One sixty day extension is allowed for which a placement permit is required. Recreational vehicles may be placed for temporary residential occupancy during the construction of a permitted dwelling for a period not to exceed one year. Recreational vehicles may be used as a primary residence only within mobile home or manufactured dwelling parks and resource zones, subject to appropriate land use approval required by other sections of the Development Code and applicable building and septic permit requirements. [Ord 90-0069]

## **PARKING AND LOADING**

**91.605 Off-Street Parking.** Except as otherwise required by other provisions of the Development Code, structures built, enlarged or increased in capacity shall provide for the following off-street parking space requirements. Gross floor is that area considered to be habitable under the terms of the Benton County Building Code.

- (1) A single-family, multi-family dwelling or manufactured dwelling shall provide two (2) spaces for each dwelling unit. Accessory dwelling units are exempt from this requirement. [Ord 2020-0297]
- (2) Libraries, museums, and art galleries shall provide one (1) space for each 500 square feet of gross floor area.
- (3) A motel or hotel shall provide one (1) space for each guestroom or suite.
- (4) A retail store, service or repair shop, bank, financial institution or office shall provide one (1) space for

each 400 square feet of gross floor area.

- (5) A place of public assembly including church, stadium, arena, club, lodge, auditorium, meeting room, and undertaking establishment shall provide one (1) space for each 100 square feet of gross floor area or one (1) space for each eight (8) seats, whichever is greater.
- (6) A day care center, residential facility, residential home, preschool nursery or kindergarten shall provide two (2) spaces for each teacher or supervisor.
- (7) An elementary school shall provide two (2) spaces for each classroom.
- (8) A middle school shall provide three (3) spaces for each classroom.
- (9) A senior high school, college or commercial school shall provide six (6) spaces for each classroom.
- (10) A hospital, convalescent hospital, nursing home, retirement center, sanitarium, or rest home shall provide one (1) space for each 1,000 square feet of gross floor area.
- (11) A bowling alley shall provide six (6) spaces for each alley.
- (12) A medical and dental clinic shall provide one (1) space for each 300 square feet of gross floor area.
- (13) A restaurant, bar, or similar establishment shall provide one (1) space for each 125 square feet of gross floor area.
- (14) An industrial or wholesale establishment, warehouse, air, rail, or trucking freight terminal shall provide one (1) space per employee on the largest shift.
- (15) A mobile home or manufactured dwelling park shall provide two (2) parking spaces for each mobile home or manufactured dwelling space.
- (16) Correctional and law enforcement facilities shall provide one (1) space for every five beds. [Ord 26, Ord 90-0069, Ord 99-0146]

#### **91.610 Location of Spaces.**

- (1) Off-street parking spaces for single-family dwellings and duplexes shall be located on the same parcel or lot as the dwelling.
- (2) Off-street parking spaces for all uses other than single-family dwellings and duplexes shall be located not further than 300 feet, measured in a straight line, from the building or use they are required to serve. [Ord 26, Ord 90-0069, Ord 96-0118]

**91.615 Multiple Users of Parking Area.** A common parking area may be used to comply with off-street parking standards for two or more structures. The number of parking spaces in a common parking area shall meet the peak demand, based on hours of operation. [Ord 90-0069]

**91.620 Parking Surface.** All parking areas, except as otherwise required by the zone, shall be hard-surfaced with asphaltic concrete, portland cement concrete, or crushed rock. All parking areas, except those in conjunction with a dwelling or duplex, shall be graded so that stormwater does not drain over the sidewalk or onto any abutting property. [Ord 90-0069]

**91.625 Loading Area.** Off-street parking areas provided to fulfill the requirements of this code shall not be used for loading and unloading operations except during periods of the day when not required to provide for parking needs. New structures and structures enlarged by more than fifty percent (50%) of the floor area which receive or distribute material or merchandise by truck shall provide and maintain off-street loading berths in sufficient numbers and size to adequately provide for the needs of the particular use. [Ord 26, Ord 90-0069]

**91.630 Curbs.** Parking spaces along the outer boundaries of a parking area shall be contained by a curb or a bumper rail placed to prevent a motor vehicle from extending over an adjacent property or a street. Planting

or screening may be required. [Ord 26, Ord 90-0069]

**91.635 Lighting.** Lighting which may be provided in a parking or loading area shall not create or reflect substantial glare on an adjacent residential area. [Ord 26, Ord 90-0069]

**91.640 Design for Parking Areas.** Parking areas may be designed so that parking spaces are arranged at either 45 degree, 60 degree or 90 degree angles, or approved variations thereof, as shown on the following illustration. Minimum dimensions for each parking space shall be eight (8) feet by eighteen (18) feet or nine (9) by twenty-three (23) feet for parallel parking spaces. Access driveways shall also conform to the illustrated standards. [Ord 90-0069]

**91.645 Driveways.** Off-street parking spaces for uses other than single-family dwellings and duplexes shall obtain access from a driveway which provides for internal traffic circulation. Driveways shall be designed to facilitate internal traffic flow and safety of ingress and egress to the site. Intersections of driveways with public roadways should be limited to the minimum number required. A road approach permit is required for each driveway intersection pursuant to BCC 99.510. [Ord 90-0069]

**91.650 Landscape Standards.** Landscaping is required for all off-street parking areas for three or more vehicles abutting property zoned PR-1, PR-2, or PR-3. The landscaping shall consist of a fence, hedge or other similar screening. [Ord 90-0069]

**91.655 Continued Use of Parking Space.** The provision and maintenance of off-street parking spaces are continuing obligations of the property owner. No building or other permit shall be issued until plans are presented that show adequate parking space in conformity with the Development Code. The subsequent use of property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking space required by the Development Code. [Ord 90-0069]

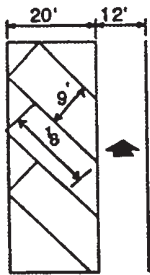
**91.660 Change in Use.** No owner or occupant of a parcel, lot, or building shall change the use of the property to a use for which the Development Code requires increased off-street parking unless the required increase in off-street parking is provided. [Ord 26, Ord 90-0069, Ord 96-0118]

**91.665 Parking for Disabled Persons.** At least one parking space shall be reserved for parking for disabled persons for each fifty (50) occupants and each increment thereof. A sign shall be posted near each parking space on public or private property that is reserved for parking for disabled persons. The sign shall state the following:

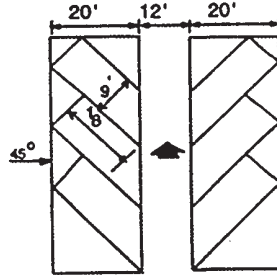
**Parking with D.M.V. Disabled Permit Only.  
Violators subject to towing under ORS 811.620  
and fine up to \$250 under ORS 811.615. [Ord 90-0069]**

# DESIGN FOR PARKING AREAS

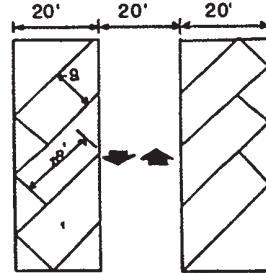
## 45 DEGREE PARKING



Head-in Parking  
One Way Circulation

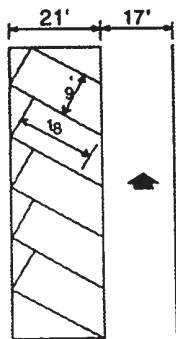


Head-in Parking Double Row  
One Way Circulation

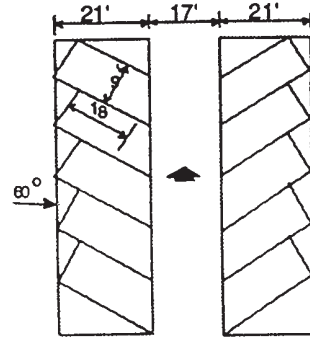


Head-in Parking Double Row  
Two Way Circulation

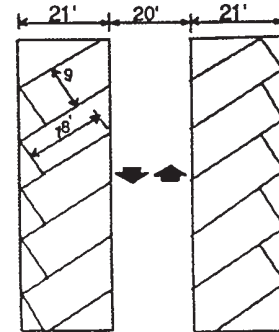
## 60 DEGREE PARKING



Head-in Parking  
One Way Circulation

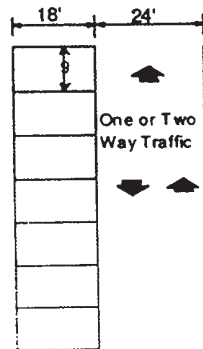


Head-in Parking  
One Way Circulation

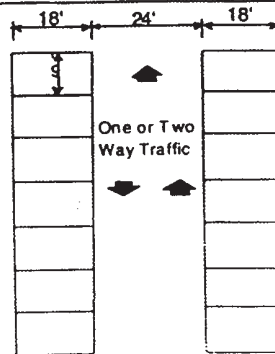


Head-in Parking Double Row  
Two Way Circulation

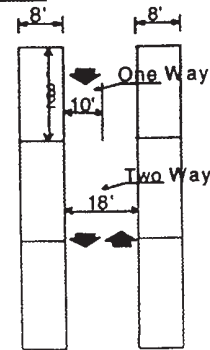
## 90 DEGREE AND PARALLEL PARKING



Head-in Parking  
Single Row



Head-in Parking  
Double Row



Head-in Parking  
Single and Double Row

## **PSILOCYBIN-RELATED PRODUCTION, MANUFACTURING AND SERVICE CENTERS**

**91.680 Generally.** Land uses involved in psilocybin-related growing/production, processing manufacturing and treatment service centers shall be governed by BCC 91.680 through 91.688. Other provisions of the Development Code shall also apply except where they conflict with more specific provisions of BCC 91.680 through 91.688. [Ord 2022-0313]

**91.682 Growing/Production.** The growing of psilocybin-producing fungi:

- (1) Pursuant to a license from the State of Oregon, is allowed as a farm use in the Exclusive Farm Use, Multi-Purpose Agriculture, Urban Industrial, Rural Industrial, Agricultural Industrial, and Airport Industrial Park zones; and
- (2) Shall be subject to all applicable overlay zones and all siting standards of the zone in which located and any other applicable provisions of the Development Code.

[Ord 2022-0313]

**91.684 Processing.** The processing of psilocybin products pursuant to a license from the State of Oregon:

- (1) Is permitted in only:
  - (a) The Exclusive Farm Use and Multi-Purpose Agriculture zones pursuant to the provisions for a facility for the processing of farm crops;
  - (b) The Urban Industrial and Rural Industrial zones pursuant to the provisions for a facility for the manufacturing, processing and/or assembling of products;
  - (c) The Agricultural Industrial zone; and
  - (d) The Special Use-Airport Industrial Park zone pursuant to the provisions for manufacturing, processing and assembling, except that on-site sale of such products are not allowed. A treatment service center may be allowed pursuant to BCC 91.686.
- (2) Is prohibited in all other zones, including as a home occupation or cottage industry.
- (3) Shall be subject to all applicable overlay zones and to the siting standards of the zone in which located.

[Ord 2022-0313]

**91.686 Service Centers.**

- (1) A psilocybin treatment service center:
  - (a) Is a conditional use in the Urban Commercial, Rural Commercial, Village Commercial, and Special Use-Airport Industrial Park zones, subject to review pursuant to the conditional use provisions of those zones.
  - (b) Is prohibited in all other zones, including as a home occupation or cottage industry.
- (2) Siting Standards.
  - (a) A psilocybin treatment service center shall not be located within 1,000 feet of:
    - (A) Either of the following, unless authorized to be so sited by the Oregon Health Authority:
      - (i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
      - (ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a).
    - (B) A licensed daycare;
    - (C) A publicly owned park, playground or recreation facility.
  - (b) If any of the uses described above is established subsequent to the legal establishment of a psilocybin treatment service center, the service center may remain at that location unless the Oregon Health Authority revokes the license of the service center operator or the service center



use is otherwise abandoned for a period of more than one year.

- (3) A psilocybin treatment service center shall:
  - (a) Operate only with proper licensing from the State of Oregon;
  - (b) Operate only indoors or within an enclosed and secured outdoor area;
  - (c) Not include overnight accommodations or other associated uses unless such uses are listed as permitted or conditional uses within the zone. Such associated uses shall require conditional use review either as part of the psilocybin treatment service center conditional use review or as a subsequent stand-alone review in conjunction with an approved psilocybin treatment service center.
  - (d) Be subject to all applicable overlay zones and to the siting standards of the zone in which located.

[Ord 2022-0313]

### **91.688 Other Land Uses.**

- (1) Notwithstanding other provisions of the Development Code, the following are not permitted uses in the Exclusive Farm Use or Multi-Purpose Agriculture zones:
  - (a) A new dwelling used in conjunction with a psilocybin-producing fungi crop;
  - (b) A farm stand used in conjunction with a psilocybin-producing fungi crop; and
  - (c) A commercial activity in conjunction with farm use, carried on in conjunction with a psilocybin-producing fungi crop.

[Ord 2022-0313]

## **SEWER SERVICES**

**91.705 Extension of Services.** Extension of municipal sewer services to areas outside urban growth boundaries may be allowed only for the following purposes:

- (1) To serve an area designated a "health hazard" according to the procedure required by State law; or
- (2) To serve an area designated Industrial or Rural Residential on the Comprehensive Plan Map for which the following findings have been made:
  - (a) The provision of municipal sewer services outside urban growth boundaries is compatible with polices in the City's comprehensive plan;
  - (b) Provision of municipal sewer service by a City does not impair the City's long-term commitment to or ability to service land either within the City or within the City's urban growth boundary;
  - (c) The proposed extension of municipal sewer services will not service any intervening rural lands, and that no connections shall be allowed in areas zoned Exclusive Farm Use or Forest Conservation;
  - (d) The extension of municipal sewer services shall not be a basis for future determination of commitment of intervening lands;
  - (e) There is not a feasible alternative for servicing the proposed development, considering soil suitability for subsurface sewage disposal, costs of a subsurface system, and the long term viability of such a system to function successfully; and
  - (f) If an urban level of services will be provided, provision of such services complies with the requirements for an exception to Statewide Planning Goals 11 and 14. [Ord 90-0069]

## **SIGNS**

**91.805 Scope.** Every sign erected, altered or relocated within unincorporated Benton County shall conform to the provisions of the Development Code. Nothing within this section shall imply any limitation on the content or message of a sign. [Ord 90-0069]

**91.810 Number and Size of Signs.**

- (1) The number of signs allowed for each separate and identifiable use or establishment is not restricted by this section. The total sign face area of all freestanding and projecting signs shall not exceed that provided for by this section unless otherwise authorized by BCC 91.815. Signs which do not project from a building are excluded from the calculation of total sign face area, including signs painted directly on a wall or roof, installed in a window, or mounted flush to a wall or roof.
- (2) The maximum allowable sign face area in square feet (s.f.) is determined from the functional classification of the roadway adjoining the use as identified in the County Transportation Management Plan. In the case of frontage on more than one roadway, the roadway providing access to the use shall determine the allowable sign face area. Where access is obtained from more than one roadway, the higher classification shall be utilized to determine the allowable sign face area.

<u>Type of Use</u>	<u>Functional Classification of Adjoining Roadway</u>		
	<u>Local</u>	<u>Collector</u>	<u>Arterial</u>
(3) Permitted Uses in Rural Residential, Urban Residential and Philomath Residential Zones	4 s.f.	6 s.f.	8 s.f.
(4) Permitted and Conditional Uses in Resource Zones and Conditional Uses in Rural, Urban and Philomath Residential Zones except where otherwise restricted as a condition of approval	16 s.f.	32 s.f.	50 s.f.
(5) All uses in Commercial and Industrial Zones and legal non-conforming industrial and commercial uses	100 s.f.	200 s.f.	300 s.f.
(6) All uses in the Rural Service Center Zone	20 s.f.	70 s.f.	120 s.f.
(7) No parcel or lot shall contain a total sign face area which exceeds one and one-half (1.5) square feet for each linear foot of adjoining road frontage. [Ord 90-0069, Ord 96-0118]			

**91.815 Exceptions to Sign Size Requirements.** An exception to the sign face area standards provided in BCC 91.810 may be allowed by conditional use permit approved by the Planning Official. In addition to complying with the criteria set forth in BCC 53.215, a sign larger than the sign face area standard shall not impair the public safety. [Ord 90-0069]

**91.820 General Sign Provisions.**

- (1) The use of a rotating beacon or flashing light designed to attract attention is prohibited.
- (2) Free standing signs shall be located no closer than 200 feet from any other freestanding sign established within 30 feet of the same adjoining right-of-way boundary. Freestanding signs shall not be elevated more than twenty-five (25) feet measured from the grade elevation to the bottom of the sign. All freestanding signs elevated greater than eight (8) feet measured from the grade elevation to the bottom of the sign shall require a building permit.
- (3) A sign shall not create a public or private nuisance by its light, brilliance, type, design, or character.



- (4) A sign shall not be constructed or erected that obscures the safe sight distance of the traveling public.
- (5) For traffic guidance on private property, non-illuminated signs not exceeding four (4) square feet of sign face per sign are permitted in addition to those permitted by BCC 91.810.
- (6) A sign is exempt from front and side setback standards of the zone, but the sign face shall not encroach on abutting lands.
- (7) No portion of a sign shall extend into a road right-of-way unless authorized by the Board of Commissioners or the State Highway Division.
- (8) A sign may not extend above the ridgeline or roof of a building.
- (9) A sign shall not be affixed to a utility pole. [Ord 26, Ord 90-0069]

## **SURFACE MINING**

**91.905 Surface Mining Standards.** Every applicant for a surface mining operation shall:

- (1) Obtain approval of a reclamation plan from the Oregon Department of Geology and Mineral Industries or the Oregon Division of State Lands. Operation and reclamation plans shall demonstrate consistency with the intended subsequent site use.
- (2) If the mining is the primary cause of traffic on an unpaved public road, that road shall be kept dust-free by the applicant if dwellings are located within 300 feet of the roadway.
- (3) Provide screening to obscure the mining site and to minimize dust and other annoyance to adjoining occupied property and adjacent public roads. Unless otherwise approved, the screening shall consist of an ornamental fence or wall, a landscaped berm or preservation of a natural slope, or vegetation.
- (4) Ensure that the mining operation does not exceed the maximum sound level permitted by the Oregon Department of Environmental Quality. A berm or other similar method may be used to reduce the sound off site to the level permitted by the Oregon Department of Environmental Quality.
- (5) Provide on-site parking for employees, customers, and visitors to the mining site.
- (6) Maintain a security fence between the mining operation and the public road when such road is located within 200 feet of the mining operation.
- (7) Not excavate in a manner which would result in disturbance of perimeter fencing or screening, or would impair the intent of the reclamation plan. [Ord 26, Ord 90-0069]

## **91.910 Mining Standards for Exclusive Farm Use Zones.**

- (1) For purposes of BCC Chapters 55 and 56, a land use permit is required for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre.
- (2) A permit for mining of aggregate shall be issued only for a site included on an inventory in the Comprehensive Plan.
- (3) For purposes of BCC Chapters 55 and 56 and this section, "mining" includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits except those constructed for use as access roads. "Mining" does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner or tenant's property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction or other on-site construction or nonsurface impacts of

underground mines. [Ord 90-0069]

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# Chapter 94

## Property Line Adjustments

**94.005 Purpose.** The purpose of the property line adjustment chapter is to allow the adjustment of property lines under certain conditions. The provisions of this chapter are intended to ensure that proposed adjustments to property lines are reviewed in a consistent, efficient and transparent manner. Further, the adjustments must be in compliance with state statutes, state provisions protecting resource lands, and County zoning. Additionally, due to the changing nature of state law and zoning regulations, this chapter may enable modification or correction of properties created under the current and historic zoning regulations. [Ord 2018-0289]

### **94.010 General.**

- (1) No person shall relocate a property line in unincorporated Benton County without approval of a property line adjustment pursuant to this chapter. [Ord 7, Ord 90-0069, Ord 96-0118]
- (2) Tax lot boundaries do not necessarily represent property boundaries. Tax lot boundaries are established by the Benton County Assessment Department for purposes of assessment and taxation and may or may not coincide with legal property boundaries. The boundaries of a legally created property are determined by the Planning Official using the definitions of “lot” and “parcel” in BCC 51.020, past land use approvals, and other applicable law.
- (3) A property line adjustment application consists of a “property line adjustment” as that term is defined by BCC 51.020 between two legally created properties, except in the case of correcting the illegal creation of a property. A property line adjustment between more than two legally created properties may be authorized as provided by 94.150. [Ord. 2018-0289]

### **94.050 Platted Parcels and Lots.**

- (1) Adjustment of all or a portion of the common property line between abutting properties, one or both of which is a parcel or lot in a recorded partition or subdivision plat, shall:
  - (a) Not be subject to the provisions of Chapter 95 or 97, provided the adjustment complies with the provisions of Chapter 94;
  - (b) Comply with BCC 94.550(1) by means of a partition or subdivision plat prepared in accordance with the standards of the Benton County Surveyor, but shall not require review pursuant to the provisions of Chapter 95 or Chapter 97; and,
  - (c) If the properties are under separate ownership, include a transfer deed meeting the standards of 94.550(1)(d) for the adjusted area(s).
- (2) In the event that either the proposed adjustment of a property line pursuant to subsection (1) of this section cannot meet the applicable provisions of Chapter 94, or the number of parcels or lots is increased, a new request for either a partition subject to all provisions of Chapter 95 or a subdivision subject to all provisions of Chapter 97 shall be required.

[Ord. 2018-0289]

### **94.100 Consolidation of Properties.**

- (1) Consolidation of properties, meaning reducing the number of properties through elimination of one or more property lines, shall conform to the following procedure:

- (a) The property owner shall provide documentation to the Planning Official as necessary to demonstrate that:
  - (A) The parcels or lots were legally established and
  - (B) For any of the parcels or lots that were not legally established, the proposed consolidation will correct that illegal establishment;
- (b) If the Planning Official's determination in subsections (a)(A) or (B) above requires the exercise of discretion, the determination shall be applied for and processed as an administrative review pursuant to BCC 53.160.
- (c) Once the Planning Official has determined that the proposed consolidation complies with subsections (a)(A) and (B), then:
  - (A) If any of the properties proposed to be consolidated was created by subdivision or partition plat, legal consolidation requires a new subdivision or partition plat in accordance with the standards of the Benton County Surveyor. A new subdivision or partition plat consolidating parcels or lots and creating no additional parcels or lots shall not be reviewed as a property line adjustment pursuant to this chapter and shall not require review pursuant to Chapter 95 or 97, notwithstanding BCC 95.050 and BCC 97.050. Signature of the Planning Official on the plat shall indicate compliance with subsection (a) of this section.
  - (B) To consolidate properties that were not created by subdivision or partition plat, the property owner shall have a property description prepared, to the standards of the County Surveyor, describing the properties to be consolidated as a single unit of land, and attach the description to a property deed that includes a statement that the property owner is intentionally consolidating the land into a single unit. The property owner shall also comply with any other requirements of the Benton County Surveyor.

[Ord. 2018-0289]

**94.150 Concurrent Property Line Adjustments.**

- (1) Two or more property line adjustments may be reviewed simultaneously, if the following requirements are met:
  - (a) The applicant submits the information required in Section 94.200 for each application and all applications are received on the same date;
  - (b) Each application includes at least one property that is also included in one or more of the other applications being reviewed, such that all together the properties being reviewed are contiguous; and
  - (c) The documents required by 94.550(1) are recorded in the order identified in the decision.
- (2) Concurrent property line adjustments will be reviewed together and will receive one decision. Each property line adjustment application shall comply with the applicable review standards and criteria or the concurrent property line adjustments as a group shall be denied.
- (3) Concurrent property line adjustments shall not cause a property located entirely in one zoning designation to be moved such that it is located entirely within a different zoning designation, unless the resulting property meets the minimum parcel or lot size of the receiving zone.

[Ord. 2018-0289]

#### **94.160 Validation of a Unit of Land Not Legally Established.**

- (1) An application to validate a unit of land not legally established shall be processed as a quasi-judicial land use action pursuant to BCC 51.605 and shall be exempt from the requirements of BCC 94.300. The applicant shall provide evidence that the criteria in this section have been met.
- (2) The criteria of this section shall only apply to units of land where all of the following are true:
  - (a) Was not created as provided by the definitions of “lot” or “parcel” in BCC 51.020, past land use approvals, or other applicable law;
  - (b) The current configuration could not be obtained using the current standards of BCC 94.300; and
  - (c) Was created in its current configuration prior to January 1, 2007.
- (3) To validate a unit of land that was not legally established through a property line adjustment, such that it becomes a legal parcel, the applicant shall provide the following:
  - (a) Evidence that at the time a unit of land was created by means of a property line adjustment, the applicable criteria for the creation of a legal parcel in effect at the time could have been met; and
  - (b) A partition plat pursuant to BCC 95.125(2) for each unit of land under separate ownership within 90 days after the preliminary decision is issued. If the 90-day timeframe is not met, the preliminary approval is void; no extension shall be provided.

[Ord. 2018-0289]

#### **APPLICATION**

**94.200 Application Requirements.** An applicant for a property line adjustment pursuant to BCC 94.350, 94.400 or 94.450 shall demonstrate that the proposed property line adjustment complies with the standards of this chapter by submitting the following:

- (1) A completed application form signed by the owner of each property involved in the property line adjustment;
- (2) An accurate scaled map showing both properties, the proposed adjustment to the property line, the property boundaries and acreages, the configuration and acreage of the area proposed to be transferred, any existing structures, roads, easements, septic systems, septic system repair areas, wells, or other improvements, and the distances of these features from existing and proposed property lines;
- (3) Current deeds for the subject properties; and
- (4) Any other information the Planning Official deems necessary to determine compliance with this chapter.

#### **PRELIMINARY APPROVAL**

**94.300 General Review Standards.** A property line adjustment shall, in addition to the applicable standards of BCC 94.350, 94.400 and 94.450, meet the following standards:

- (1) The existing properties are legally created or will become legally created as a result of the property line adjustment;
- (2) As a result of the amount of land transferred, the resulting property sizes will:
  - (a) Comply with the applicable minimum parcel or lot size;
  - (b) Not be reduced in size;
  - (c) Comply with applicable minimum and maximum size per BCC 100.205(6), if the properties

are within the Urban Growth Boundary of Corvallis and were created pursuant to Chapter 100;

- (d) Transfer no more acreage than that necessary to correct the encroachment of a legally built structure over a property line and establish the required setback to the adjusted property line; or
  - (e) Comply with 94.350(1)(b), 94.400(1)(a)(B), or 94.400(2)(a);
- (3) Each of the resulting properties:
- (a) Retains the entire septic drainfield (and reserve area if one has been designated) on the property. If any portion of the septic system or reserve area is located on the other property, appropriate easements shall be established if not already existing. If no reserve area has been designated, or if the County Sanitarian determines the system or reserve area could potentially be impacted by the proposed property line adjustment, the County Sanitarian may require the applicant to apply for a septic system evaluation certifying that the proposed property line adjustment does not affect any portion of the on-site sewage disposal system;
  - (b) Maintains required setbacks;
  - (c) Maintains required frontage, depth-to-width ratio, and flag-lot dimensions pursuant to Chapter 99 and the applicable zone.
- (4) A property line adjustment involving an existing property that is nonconforming to the standards referenced in subsections (3)(b) and (c) of this section may be approved if the property line adjustment will not increase the degree of the nonconformity. [Ord 2009-0233 eff. 6/2/2011]
- (5) When one or more structures exists on one or both properties, the property line adjustment may cause one or more of those structures to shift to a different property if:
- (a) The zoning of the property receiving the structure or structures allows the type and number of structures being received as an outright permitted use; or
  - (b) The property receiving the structure or structures has received land use approval for the type and number of structures being received.
- (6) A property line adjustment shall not separate a temporary medical hardship dwelling, an accessory dwelling unit, or a home occupation from the property on which the primary residential use exists.
- (7) One of the following is met:
- (a) If both properties are entirely outside of an identified Special Flood Hazard Area (SFHA), then the property line adjustment is compliant; or
  - (b) If any portion of the properties is within an identified SFHA, then:
    - (A) If the area being transferred is entirely within the SFHA, then the property line adjustment is compliant; or
    - (B) If the area being transferred is partially or fully outside the SFHA, then the resulting properties shall comply with the building site parameters of BCC 83.520(2)(b) through (d) and the access standards of BCC 83.520(2)(e).

[Ord. 2018-0289, Ord 2021-0304]

**94.350 Properties in Non-Resource Zones.** An adjustment of property lines where all of the land involved is in the same non-resource-zone shall be processed through a ministerial review as provided by subsection (1).

- (1) A property line adjustment shall be reviewed ministerially if the following can be met:
- (a) The resulting properties meet the size requirements of BCC 94.300(2)(a) through (d); or,
  - (b) If the size requirements of BCC 94.300(2)(a) through (d) cannot be met and one or both of the

existing properties are currently smaller than the minimum parcel or lot size, the following alternative outcomes are available:

- (A) If only one of the existing properties is smaller than the minimum parcel or lot size, then:
  - (i) Both resulting properties shall be at least as large as the smallest existing property; and
  - (ii) At least one of the resulting properties shall meet or exceed the minimum parcel or lot size.

**Example:** The minimum parcel or lot size is 2 acres. If Property A is 1.5 acres and Property B is 2.5 acres, then neither property may be smaller than 1.5 acres after the property line adjustment is complete and at least one of the resulting properties has to be 2 acres or larger.

- (B) If both existing properties are smaller than the minimum parcel or lot size, then:
  - (i) Both resulting properties shall be at least as large as the existing smallest property.

**Example:** The minimum parcel or lot size is 2 acres. If Property A is 1.5 acres and Property B is 1.0 acres, then neither property can be smaller than 1.0 acres after the property line adjustment is complete.

[Ord. 2018-0289, Ord 2021-0304]

**94.400 Properties in Resource Zones.** An adjustment of property lines where all of the land involved is in the same resource-zone shall be processed through a ministerial review as provided by subsection (1), or as a quasi-judicial land use action pursuant to BCC 51.605 as provided by subsection (2). Subsections (3) and (4) shall apply to all applications.

- (1) A property line adjustment shall be reviewed ministerially if both (a) and (b) can be met:
  - (a) The resulting properties will meet the size requirements of:
    - (A) BCC 94.300(2)(a) through (d); or
    - (B) When one or both existing properties are currently smaller than the minimum parcel or lot size, the following alternative outcomes are available:
      - (i) If only one of the existing properties is smaller than the minimum parcel or lot size, then:
        - (a) Both resulting properties shall be at least as large as the smallest existing property; and
        - (b) At least one of the resulting properties shall meet or exceed the minimum parcel or lot size.

**Example:** The minimum parcel or lot size is 80 acres. If Property A is 75 acres and Property B is 100 acres, then neither property can be smaller than 75 acres after the property line adjustment is complete and at least one of the resulting properties has to be 80 acres or larger.

- (ii) If both existing properties are smaller than the minimum parcel or lot size, then:
  - (a) Both resulting properties shall be at least as large as the smallest existing property.

**Example:** The minimum parcel or lot size is 80 acres. If Property A is 75 acres and Property B is 40 acres, then neither property can be smaller than 40 acres



after the property line adjustment is complete.

- (b) A property line adjustment shall not increase the size of a parcel containing a dwelling approved as a nonfarm dwelling, lot-of-record dwelling, or template-test dwelling, or containing a nonfarm or nonforest use, unless either:
  - (A) Both properties involved have been approved for one of these types of dwellings or uses; or
  - (B) The adjustment is consistent with an approval for a nonfarm parcel.
- (2) If the criteria of subsection (1) cannot be met, a property line adjustment shall be processed as a quasi-judicial land use action pursuant to BCC 51.605 and approved if the resulting properties meet the following:
  - (a) A resource-zoned parcel currently smaller than the minimum parcel or lot size may be reduced in size by property line adjustment if:
    - (A) The property line adjustment will result in a net increase in the ability to use resource-zoned land for resource use, when considering the reduced ability on the parcel that is being reduced in size and the increased ability on the parcel that is being increased in size;
    - (B) The property line adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, and will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
    - (C) The acreage transferred from the undersized resource-zoned property will be transferred to another resource-zoned property.
  - (b) A property line adjustment shall not increase the size of a parcel containing a dwelling approved as a nonfarm dwelling, lot-of-record dwelling, or template-test dwelling, or containing a nonfarm or nonforest use, unless:
    - (A) The property line adjustment will result in a net increase in the ability to use resource-zoned land for resource use, when considering the reduced ability on the parcel that is being reduced in size and the increased ability on the parcel that is being increased in size.
- (3) A deed restriction shall be required in the following circumstances:
  - (a) A property line adjustment shall not be used to qualify an abutting vacant lot or parcel for a dwelling based on acreage. In cases where subsections (A) and (B) are true, a deed restriction shall be recorded on the vacant parcel or lot increasing in size, stating that the transferred acreage cannot be used to qualify the vacant parcel or lot for a dwelling based on an acreage standard. The deed restriction shall be provided by the Community Development Department for signature by the property owner(s), and shall be recorded concurrent with the final approval of the property line adjustment. The applicant shall be responsible for fees for document preparation and recording.
    - (A) The lot or parcel decreasing in size contains a dwelling or is approved for a dwelling, or, if the lot or parcel has no dwelling, after the property line adjustment the lot or parcel would continue to meet the minimum size required to qualify for a dwelling; and,
    - (B) After the property line adjustment the lot or parcel decreasing in size would be smaller than the minimum parcel size, whether or not it was smaller than the minimum parcel size before the property line adjustment.

**Example:** The minimum property size in the Exclusive Farm Use (EFU) zone is 80 acres. If a lot or parcel of EFU zoned land is 160 acres or more, and other code criteria are met, a dwelling right may be allowed. Property A and Property B are abutting. Property A is 30 acres and contains a dwelling legally built in 1948. Property B is 150 acres and contains no dwelling. A property line adjustment transferring 10 acres from Property A to Property B shall not qualify the resultant 160 acre Property B for a dwelling right, and a deed restriction pursuant to BCC 94.300(3)(b) shall be recorded on Property B.

- (b) A property line adjustment in which the property decreasing in size qualified for a dwelling based on an acreage standard shall require the recording of a deed restriction prohibiting use of any of that property to qualify another tract for a dwelling based on an acreage standard. The deed restriction shall be recorded on both properties involved in the property line adjustment. The deed restriction shall be provided by the Community Development Department for signature by the property owner(s) and shall be recorded concurrent with the final approval of the property line adjustment. The applicant shall be responsible for fees for document preparation and recording.

**Example:** The minimum property size in the Forest Conservation zone is 80 acres. If 160 acres of Forest Conservation zoned land are contiguous and under the same ownership and meet other code criteria, a dwelling right may be allowed. Property C and Property D are abutting and under the same ownership. Property C contains 70 acres and Property D contains 100 acres. Together Property C and Property D total 170 acres, and a dwelling right was approved for that tract. Property E abuts Property D. Property E is 150 acres. If 10 acres of Property D were transferred to Property E, Property D would still comply with the 80-acre minimum parcel size and Property E would then total 160 acres. However, because the acreage in Property C and Property D was already used to qualify that tract for a dwelling, no part of the land that was within Property C or Property D can be used to obtain a dwelling right for Property E or any other property. The property line adjustment transferring the 10 acres might be allowed, however a deed restriction will be required to be recorded on all the properties involved in the transfer, stating that the land being transferred has already been used to obtain a dwelling right and cannot be used again.

- (4) A property line adjustment shall not:
  - (a) Separate a dwelling approved as a farm-related dwelling from the farm operation, nor separate the primary farm dwelling from an accessory farm dwelling or farm-help dwelling for a relative, unless the accessory or farm-help dwelling is approved for placement on its own parcel pursuant to Chapter 55.
  - (b) Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver, as described by ORS 195.300, so that any lawfully established unit of land affected by the property line adjustment is larger than the maximum size authorized by the Measure 49 waiver.
  - (c) Separate a facility for processing farm products from the farm operation on which it is located.
- (5) Note: A property line adjustment that reconfigures a lot, parcel or tract of land, the effect of which is to cause a lot, parcel or tract to qualify for the siting of a dwelling, may disqualify the lot, parcel or tract for the siting of a dwelling pursuant to Chapter 55 or 60.

[Ord 2009-0232, Ord 2018-0289, Ord 2020-0297, Ord 2021-0304]

**94.450 Split-zoned Properties.** Adjustment of property lines that will result in a parcel containing more than one zone designation shall be reviewed pursuant to BCC 94.300 and this section. In addition, for any resulting property that will contain resource-zoned land, BCC 94.400 shall apply; for resulting properties containing no resource-zoned land, BCC 94.350 shall apply.

- (1) Creation of a split-zoned property may be allowed only if:
  - (a) Any reduction in property size will not increase the degree of nonconformity; and,
  - (b) The owner(s) of the property that will be split-zoned records a deed restriction agreeing that no parcels will be created by partitioning along the zone line unless each parcel resulting from such a division would be consistent with the applicable minimum parcel or lot size. The deed restriction form will be provided by the Community Development Department for signature by the property owner, who will be responsible for fees for document preparation and recording.
- (2) In addition to the requirements of subsection (1) of this section, a property line adjustment that would result in property(ies) being split between a resource zone and a non-resource zone may be allowed if:
  - (a) A property line adjustment that reduces the size of a resource-zoned property shall be allowed only if the remaining resource-zoned property (or resource-zoned portion of the property) complies with the applicable minimum parcel or lot size.
  - (b) A property line adjustment that reduces the size of a non-resource-zoned property shall be allowed only if the remaining non-resource-zoned property (or non-resource-zoned portion of the property) complies with the applicable minimum parcel or lot size.
  - (c) In the case of a resource-zoned property that is adjusted to include non-resource-zoned land:
    - (A) The non-resource zoned portion of the property shall not be eligible for a new dwelling or include an existing dwelling, unless the non-resource-zoned portion meets the applicable minimum parcel or lot size or density; and,
    - (B) On the resource-zoned portion of the property, only those uses allowed in the resource zone may be established.
    - (C) Deed restrictions shall ensure compliance. The deed restriction form(s) will be provided by the Community Development Department for signature by the property owner, who will be responsible for fees for document preparation and recording. [Ord. 2018-0289]
  - (d) In the case of a non-resource-zoned property that is adjusted to include resource-zoned land, only those uses allowed in the resource zone may be established on the resource-zoned portion of the property. Deed restrictions shall ensure compliance. The deed restriction form(s) will be provided by the Community Development Department for signature by the property owner, who will be responsible for fees for document preparation and recording. [Ord. 2018-0289]

**94.500 Period of Validity of Preliminary Approval.** Within one year of preliminary approval, the applicant shall comply with the requirements of this section to complete the property line adjustment. Upon written request submitted prior to the expiration date, the Planning Official may extend the expiration date of a property line adjustment preliminary approval for one additional six-month period.

## **FINAL DOCUMENT APPROVAL**

### **94.550 Final Approval**

- (1) To obtain final approval, the applicant shall:
  - (a) For resulting properties 10 acres or smaller or located in a residential zone or inside an urban growth boundary, submit a survey or plat conforming to the standards of the County Surveyor. The survey or plat shall:
    - (A) Show the adjusted property line and, if a survey, all structures within 25 feet of the property line. Any septic system easements created for purposes of this property line

adjustment shall also be shown and monumented; and,

- (B) Establish monuments to mark the adjusted line.
- (b) For properties other than those listed in subsection (a) of this section, submit a scale-drawn map that accurately depicts the resulting property configurations conforming to the legal descriptions required by subsection (d) of this section. This map shall be on letter- or legal-sized paper and attached to and recorded with the deed(s) described in subsection (d).
- (c) Notwithstanding subsections (a) and (b) of this section, if one or more of the properties being adjusted is a parcel resulting from a partition plat or a lot resulting from a subdivision plat, the applicant shall submit a partition or subdivision plat as specified in BCC 94.050(1)(b). [Ord. 2018-0289]
- (d) Submit to the Community Development Department for review a deed or deeds consistent with ORS 92.190(4) first in final draft form and again once ready for recording, which contain the following:
  - (A) The planning file number(s);
  - (B) The legal descriptions of both resulting properties and the property transfer(s) prepared by an Oregon-registered Professional Land Surveyor;
  - (C) The property transfer document(s) shall state “This conveyance is made solely as an adjustment of the boundary between adjacent properties and does not create a separate property that can be conveyed independently.”
  - (D) A scale-drawn map depicting the adjusted property line and resultant properties;
- (e) Once the Planning Official has reviewed and approved the deed(s) and the survey or plat or map, the Planning Official shall sign the survey or plat or map indicating Final Approval of the property line adjustment, and shall record the deeds in Benton County Deed Records, thereby completing the property line adjustment.

[Ord 2018-0289]

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# Chapter 95

## Partitions

**95.005 Scope.** All partitions shall be subject to the provisions of this chapter. Partitions within the Corvallis Urban Growth Boundary shall also be reviewed pursuant to the Planned Unit Development standards contained in BCC Chapter 100. For the purposes of this chapter, "road" means a public or private way that is created to provide ingress or egress for persons to two or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining, or agricultural purposes. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 98-0141]

### **95.010 Deed Release.**

- (1) The Planning Official may grant the owner or contract purchaser of land an exemption to the provisions of this chapter in order to secure financing for a portion of a parcel or lot.
- (2) A division of land resulting from lien foreclosure shall be exempt from the provisions of this chapter.
- (3) The owner shall sign and submit for recording in the County Deed Records for the subject property a deed covenant containing the following statement in acknowledgement of the provisions of this section:

The Owner(s) or Contract Purchaser(s) agree to treat the land described herein as a single unit, notwithstanding the fact that portions may be given a separate tax account. Sale or transfer of any portion of the property without prior approval by Benton County of a land partition will be a violation of the Benton County Code, except that a division of land resulting from lien foreclosure shall be exempt from the provisions of the Benton County Code. [Ord 93-0097, Ord 96-0118, Ord 2015-0267]

**95.050 Replatting.** A replat of a recorded partition plat shall be reviewed as a new request for a partition and shall be subject to all provisions of this chapter. When a utility easement is proposed to be realigned, reduced in width or omitted by a replat, all affected utility companies or public agencies shall be notified consistent with BCC 51.605 to 51.615. [Ord 92-0092]

**95.105 Approval Process.** The applicant is advised to consult with the Community Development Department staff prior to compiling necessary information for the preparation and submission of an application. Completion of a partition is accomplished through a two-step review resulting in preliminary and final approvals. For purposes of appeal, a decision granting or denying preliminary approval may be appealed on the issues of compliance with the criteria in BCC 95.120. [Ord 90-0069, Ord 92-0092, Ord 2015-0267]

### **95.110 Series Partition.**

- (1) A landowner proposing to partition a parent parcel containing more than six times the minimum parcel size or, in the Corvallis Urban Fringe, six times the maximum density shall first obtain preliminary approval of a series partition.
- (2) The applicant shall apply for a series partition pre-application conference. A sketch plan and narrative with sufficient detail to outline the development plan must accompany the request.
- (3) The Planning Official shall schedule a pre-application conference with the applicant within twenty-one (21) days following receipt of the letter of intention. Representatives of public and private agencies may attend or may submit such information and recommendations that will assist the applicant in preparing the series partition.
- (4) The application for a series partition shall contain the information listed in BCC 95.115 as well as the location and width of future road rights-of-way, and any drainageways on the subject parcel or

lot. The application shall also demonstrate compliance with all applicable provisions of Chapter 99. All parcels shall be labeled with the year in which they are proposed to be created. The series partition plan shall show all parcels that can be created, based on the final plan having all parcels smaller than twice the minimum parcel size, and other applicable regulations.

- (5) The Planning Commission shall conduct a public hearing for the purpose of reviewing the proposed series partition. The Planning Commission shall consider the provisions of the Development Code and approve with conditions, or deny, the proposal. The decision shall be based upon findings pursuant to the criteria in BCC 95.120. Preliminary approval of the series partition shall be a final decision for the purpose of appeal.
- (6) The Planning Commission shall impose conditions of approval pursuant to BCC 95.125 and may also impose additional conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the proposed partitioning, or to otherwise ensure compliance with the purpose and provisions of this code. On-site and off-site conditions may be imposed. An applicant may be required to post a bond or other guarantee pursuant to BCC 99.905 to 99.920 to ensure compliance with a condition of approval.
- (7) Notwithstanding BCC 95.130, the series partition preliminary approval shall be valid for the minimum number of years necessary to plat all parcels at the rate of three parcels (remainder parcel and two additional parcels) per calendar year, plus one year additional. This time period may be extended for one additional year by means of the procedure in BCC 95.130(2).
- (8) Land in a series partition may be partitioned as follows:
  - (a) The series partition preliminary approval shall serve as the preliminary approval for all plats.
  - (b) To plat parcels, the applicant shall request final approval of a partition plat pursuant to BCC 95.150 and shall demonstrate compliance with the conditions of approval applicable to the parcels proposed for platting.
  - (c) A partition shall divide land into no more than three parcels within a calendar year.
  - (d) The proposed plat shall require additional review as specified in (e) below if:
    - (A) any parcel is changed by more than 10% in size or in any dimension; or
    - (B) any element of the conditions of approval is proposed to be modified.
  - (e) If review is required, the applicant shall apply for an interpretation by the Planning Official to determine whether the proposed partition substantially conforms to the series partition preliminary approval. The Planning Official's determination is a land use decision subject to notice and appeal.
    - (A) If the Planning Official determines that the proposed partition does substantially conform to the series partition preliminary approval, the applicant may proceed with the platting process pursuant to subsection 95.150.
    - (B) If the Planning Official determines that the proposed partition does not substantially conform to the series partition preliminary approval, the applicant shall apply for a new series partition approval.

[Ord 7, Ord 90-0069, Ord 96-0118, Ord 2007-0223, Ord 2007-0224, Ord 2015-0267]

**95.115 Applications for a Partition.** An application for a partition shall be accompanied by:

- (1) A sketch which illustrates the proposed partition. A survey is not required for the preparation of the sketch. The sketch shall show:
  - (a) The entire boundary of the parent parcel and the boundaries of each proposed parcel;
  - (b) The acreage of each proposed parcel;

- (c) The amount of frontage of each proposed parcel on an adjacent public road or street or on an existing private road or street;
  - (d) The location of any improvements, including buildings, driveways, wells and septic systems and the setbacks of existing buildings and septic systems to proposed property lines;
  - (e) The location and purpose of any easements and, if information is available, the width; and
  - (f) The location of any existing private road that will provide access to the proposed parcels. If information is available, describe the location, grade, depth and composition of the road base, and the width of both the all weather surface and the base.
- (2) A plan and profile of the proposed road if a road will be constructed to provide access to a proposed parcel or lot. The plan shall be accompanied by a topographic survey or contour map at two foot intervals if less than a fifteen percent (15%) slope (otherwise at fivefoot intervals).
  - (3) Water supply documentation required by BCC 99.840 through 99.850. [Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2007-0223, Ord 2007-0224, Ord 2015-0267]

**95.120 Preliminary Approval.** Preliminary approval is granted by the approving authority based on findings that the subject lot or parcel was legally created and the proposed partition complies with:

- (1) The criteria for creation of new parcels of the zone in which the proposed parcels are located;
- (2) The floodplain requirements of BCC 83.520(2);
- (3) All applicable provisions of Chapter 99;
- (4) Complies with the provisions of all applicable overlay zones, including Chapters 82 through 88.

[Ord 7; Ord 90-0069; Ord 92-0092; Ord 96-0118; Ord 2007-0223; Ord 2007-0224; Ord 2009-0233, eff. 6/2/2011; Ord 2013-0253 eff. 8/15/2013; Ord 2015-0267; Ord 2021-0304, eff 10/7/2021]

**95.125 Conditions of Approval.** The following conditions shall be imposed at the time of preliminary approval and must be met prior to issuance of final approval:

- (1) An Oregon licensed land surveyor shall survey and monument the parcels, except that:
  - (a) A parcel in a resource zone which exceeds ten (10) acres need not be surveyed or monumented.
  - (b) A parcel in a non-resource zone which exceeds ten (10) acres or two and one-half times the minimum parcel size, whichever is greater, need not be surveyed or monumented.
  - (c) Notwithstanding BCC 95.125(1)(b), the Planning Official may require that parcels created by a partition be surveyed and monumented if the County Surveyor recommends that due to errors and discrepancies of previous surveys, a complete survey is in the best interest of the owners of the subject and adjoining parcels or lots, or if series partitions of the parent parcel necessitates a complete boundary survey to assure the planned development of the property.
- (2) A partition plat shall be prepared by an Oregon licensed land surveyor in accordance with ORS Chapter 92 and County Surveyor Plat Standards. The surveyor shall submit the original plat and a true reproducible of the plat, and the filing fee to the County Surveyor.
- (3) The applicant shall comply with the requirements of Chapter 99.
- (4) All taxes, interest and penalties shall be paid in the manner prescribed for subdivision plats pursuant to ORS 92.095.
- (5) The approving authority may impose any other conditions required by a specific section of this code or by State law. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2015-0267]

**95.130 Effective Period of Preliminary Approval.**

- (1) The preliminary approval shall be effective for a period of one (1) year from the date of decision, after



which time the approval automatically expires.

- (2) The approving authority may extend the preliminary approval for one additional six (6) month period. The owner shall submit a written request for extension to the Planning Official prior to expiration of the preliminary approval, stating reasons why the initial deadline was not met, and provide evidence that all conditions of approval will be completed within the extension period. [Ord 90-0069, Ord 2015-0267]

#### **95.150 Final Approval.**

- (1) Final approval is granted by the Planning Official based upon findings that the applicant has complied with all the conditions imposed in the preliminary approval. Final approval completes the land partition.
- (2) To obtain final approval the applicant shall submit one set of documents demonstrating compliance with the conditions of approval.
- (3) The landowner(s) or contract purchaser(s) shall acknowledge a documented recorded ownership interest in the parcels by signing the partition plat. The signature shall be notarized.
- (4) The Planning Official shall provide for signature of the plat by the Assessor and Tax Collector, or their designee(s), signifying payment of taxes, interest or penalties pursuant to ORS 92.095.
- (5) The Planning Official shall signify final approval of the partition by signing the partition plat.
- (6) The County Surveyor shall signify compliance with plat standards by signing the partition plat.
- (7) All improvements to be dedicated to the public shall be installed to the satisfaction of the County Engineer prior to final approval of the partition. In lieu of complete installation of public improvements, an improvement agreement and performance guarantee may be submitted pursuant to BCC 99.905 to 99.920.
- (8) The Board of Commissioners shall signify acceptance of any right-of-way dedication by signing the partition plat.
- (9) The County Surveyor shall record the plat with the Benton County Records and Elections Office.
- (10) The Assessor shall assign a new tax account to each parcel in an approved partition plat. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2015-0267]

# **Chapter 96**

*Reserved for Expansion*

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# Chapter 97

## Subdivisions

**97.005 Scope.** A subdivision is a division of land into four or more parcels or lots within a calendar year. All subdivisions shall be subject to the provisions of this chapter. Subdivisions within the Corvallis Urban Growth Boundary shall also be reviewed pursuant to the Planned Unit Development standards contained in BCC Chapter 100. [Ord 7, Ord 90-0069, Ord 98-0141]

**97.050 Replatting.** A replat of a recorded subdivision plat shall be reviewed as a new request for a subdivision and shall be subject to all provisions of this chapter. When a utility easement is proposed to be realigned, reduced in width or omitted by a replat, all affected utility companies or public agencies shall be notified consistent with BCC 51.605 to 51. 615. [Ord 92-0092]

### APPLICATION

**97.105 Letter of Intent to Subdivide.** The applicant shall inform the Planning Official in writing of the intention to apply for a subdivision, and request a pre-application conference. A sketch plan and narrative must accompany the letter of intention with sufficient detail to outline the development plan. [Ord 7, Ord 90-0069].

**97.110 Pre-Application Conference.** The Planning Official shall schedule a pre-application conference with the applicant within twenty-one (21) days following receipt of the letter of intention. Representatives of public and private agencies may attend or may submit such information and recommendations that will assist the applicant in preparing the tentative subdivision plat. The applicant or the Planning Official may request additional meetings. [Ord 7, Ord 90-0069]

### 97.115 Application.

- (1) A complete application for a subdivision shall include fifteen copies of a preliminary plat that conforms to map standards established by the County Surveyor and ORS Chapter 92. A preliminary plat shall illustrate:
  - (a) Lot and road design consistent with the Development Code.
  - (b) Location, names, width, elevation and grades of existing and proposed streets in, or adjacent to, the proposed subdivision.
  - (c) Contour lines at two foot intervals unless otherwise approved by the County Engineer. Five foot contour lines may be used in areas of greater than fifteen (15) percent slope or if the tract is divided into lots of five (5) acres or more. The source and accuracy of contour shall be specified.
  - (d) The location of at least one temporary benchmark within the boundaries of the proposed subdivision.
  - (e) The location of all areas subject to the base flood:
    - (A) As shown on the Flood Insurance Rate Maps on file in the office of the Benton County Community Development Department; or
    - (B) As shown on the revised flood information prepared by the applicant if the standards of BCC 83.520(1)(b) apply.
  - (f) Soils using USDA Natural Resources Conservation Service information or field studies prepared from specific site data.
  - (g) The proposed lot lines, approximate dimensions, and lot numbers.

- (h) Proposed phases or additions for the completion of public improvements and the filing of final plats.
  - (i) The location, width and purpose of all easements.
  - (j) The location of all utilities including water, sewer, power, telephone, natural gas and cable television.
  - (k) The proposed plan for stormwater drainage consistent with BCC 99.650 through 99.680, including any off-site improvements.
  - (l) The location and purpose of all common or public facilities.
  - (m) The proposed subdivision name, and the name, address, and phone number of the applicant and all representatives responsible for the plan.
  - (n) A vicinity map showing the boundary of the parent parcel, intersecting property lines, adjacent streets, sewers, water lines and ownerships abutting the boundary of the parent parcel as found in the County Assessor's records.
- (2) An application shall further include three copies of a narrative that provides the following information.
- (a) A phased development schedule.
  - (b) A schedule for construction of all improvements.
  - (c) The proposed method for providing water supply for each parcel or lot and documentation required to demonstrate compliance with BCC 99.840 to 99.850.
  - (d) The proposed method for providing sewage disposal for each parcel or lot.
  - (e) Description of the impact of the proposed subdivision on water, sewer, fire protection, law enforcement, schools, hospitals, solid waste disposal and other services.
  - (f) Description of all community facilities or systems including a maintenance program for such systems.
  - (g) A copy of tentative covenants, conditions and restrictions, if any, proposed by the applicant.
- (3) The applicant shall submit two copies of the tentative plat and the appropriate fee to the County Surveyor. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2007-0223, Ord 2007-0224, Ord 2009- 0232, Ord. 2009-0233 eff. 6/2/2011, Ord 2011-0240, Ord 2021-0304, eff 10/7/2021]

**97.120 Design Standards.** A subdivision shall be designed to comply with the land development standards contained in BCC Chapters 83 and 99. In addition, the minimum width for utility easements shall be:

- (1) Ten (10) feet when abutting a rear property line.
- (2) Sixteen (16) feet when centered on a rear property line, resulting in eight (8) feet on either side of the property line.
- (3) Five (5) feet along prescribed side property lines as authorized by the County Engineer. [Ord 7, Ord 90-0069, Ord 96-0118, Ord. 2009-0233 eff. 6/2/2011]

## **PRELIMINARY APPROVAL**

**97.205 Notice of Pending Action.** After receiving a complete application, the Planning Official shall schedule a public hearing and issue public notice for the purpose of reviewing the subdivision's preliminary plat. The Planning Official shall coordinate review of the preliminary plat with all affected city, county, state and federal agencies and all affected special districts. [Ord 90-0069]

**97.210 Approval of Preliminary Plat.** The Planning Commission shall review all preliminary plat documents and conduct a public hearing for the purpose of reviewing the proposed subdivision. The

Planning Commission shall consider the provisions of the Development Code, and approve, approve with modifications or conditions, or deny the proposal. The decision shall be based upon findings justifying the decision. Approval of the tentative plat shall be a final decision for the purpose of appeal on the issue of compliance with BCC Chapter 99. [Ord 90-0069, Ord 92-0092]

**97.215 Public Improvements.** The Planning Commission may require that all public improvements be installed and dedicated prior to final plat approval or a bond shall be required ensuring completion pursuant to BCC 99.905 to 99.920. The amount of the bond shall be established by the County Engineer. The bond shall be submitted by the applicant prior to final plat approval. [Ord 90-0069]

**97.305 Effective Period.** Unless a phasing schedule is approved by the Planning Commission, a tentative plat shall be effective for a period of twelve (12) months from the date of decision, after which time the approval automatically expires. [Ord 7, Ord 90-0069]

**97.310 Extension of Effective Period.**

- (1) The Planning Official may grant one extension of six (6) months for submitting the final plat and documents. The applicant shall submit the request for extension in writing to the Planning Official prior to expiration of the effective period and shall provide evidence that the plat and documents will be completed within 18 months of the tentative plat approval.
- (2) The Planning Commission may grant one extension of twelve (12) months for submitting the final plat and documents. The applicant shall submit the request for extension in writing to the Planning Official prior to the expiration date of the effective period. The applicant shall submit evidence that the plat and documents will be completed within twenty-four (24) months of the tentative plat approval. [Ord 7, Ord 90-0069]

**FINAL PLAT REVIEW**

**97.405 Final Plat Submittal.** The applicant shall submit two sets of prints and all accompanying documents to the Planning Official prior to expiration of the tentative plat. The original of the final plat shall be filed with the County Surveyor. The plat and documents shall contain all modifications required as conditions of approval. The final plat submittal shall include the following items:

- (1) A final plat map that complies with map standards established by the County Surveyor and ORS Chapter 92. Such plat shall illustrate or include:
  - (a) All existing and proposed easement lines. The description of each easement shall include the purpose, width, length and bearing, and sufficient ties to locate the easement with respect to the subdivision lines. If an easement is not definitely located, a statement of the easements shall be given. If the easement has been recorded, the recording reference shall be listed.
  - (b) The land to be dedicated for any purpose, public or private, as distinguished from parcels or lots intended for sale.
  - (c) A certificate signed and acknowledged by all parties having any recorded title interest in the land (except lienholders) consenting to the preparation and recording of the final plat.
  - (d) Certificates for signatures of approval by the Chairman of the Planning Commission, County Engineer, Assessor, Tax Collector, County Surveyor and the Board of Commissioners.
  - (e) Other certifications required by State law.
- (2) Drawings and calculations which illustrate or include:
  - (a) Traverse data including the coordinates of the boundary of the subdivision and ties to section corners and donation land claim corners, and showing the error of closure.
  - (b) The computation of all distances, angles, and courses shown on the final plat.
  - (c) Ties to monuments, adjacent subdivisions, and street corners.

- (3) Evidence of adequate quality and quantity of water to each parcel or lot.
- (4) Evidence of adequate sewage disposal for each parcel or lot.
- (5) A copy of any final covenants, conditions, and restrictions applicable to the subdivision, to be recorded with the final plat.
- (6) Documents dedicating all roads, pedestrian ways, drainage channels, easements, and other public rights-of-way.
- (7) Plans, specifications and supporting documents for improvements of lands dedicated for roads, pedestrian ways, drainage channels, easements, and other public rights-of-way.
- (8) The applicant shall pay engineering review fee. [Ord 7, Ord 90-0069, Ord 92-0092]

**97.410 Staff Review of the Final Plat.** The Planning Official, Engineer, and County Surveyor shall concurrently review the final plat for conformity with the approved tentative plat and State law.

- (1) If the Planning Official, County Engineer or County Surveyor determine that the final plat and documents do not conform to the approved tentative plat and State law, the applicant shall be afforded the opportunity to make corrections. The corrections shall be completed within three (3) months following expiration of the tentative plat approval.
- (2) Minor changes from the tentative plat may be authorized by the Planning Official provided that such changes are required by engineering or other circumstances unforeseen at the time the tentative plat was approved. All changes must be consistent with the provisions of the Development Code. If other revisions are made to the subdivision plan, and the Planning Official finds that such revisions differ significantly from the approved tentative plat, the final plat shall be denied. [Ord 90-0069]

**97.415 Final Plat Signatures.** Once staff review and approval has occurred, the County Surveyor shall forward the final plat to the Planning Commission Chairman, County Engineer, Assessor, Tax Collector, County Surveyor and special district board chairman, if applicable, for signature. [Ord 7, Ord 90-0069]

**97.420 Final Plat Approval by the Board.** The County Surveyor shall submit the signed final plat to the Board of Commissioners for final approval. The Board of Commissioners shall grant final approval by signing and dating the final subdivision plat. Approval of the final plat shall be a final decision of the issue of compliance with BCC 97.405 to 97.410. [Ord 90-0069]

**97.505 Filing the Final Plat.** The County Surveyor shall file and record the final subdivision plat and record the Notice of Final Approval with the County Records and Elections Office. The applicant shall be responsible for the recording fees. [Ord 90-0069, Ord 2009-0232]

# Chapter 98

## Planned Unit Development

**98.005 Purpose.** The planned unit development (PUD) is intended to add flexibility to the subdivision standards and procedures of the Development Code in order to address topographic, economic or aesthetic factors encountered in the development process. It is the purpose of the PUD review process to allow new or innovative design and technology; to promote the most appropriate use of the land; to facilitate adequate and economical provisions for roads and public facilities; and to preserve the natural and scenic features of a site. Regardless of the provisions of this chapter, all planned unit developments within the city of Corvallis Urban Growth Boundary shall be reviewed pursuant to the Planned Unit Development standards contained in BCC Chapter 100. Also regardless of the provisions of this chapter, all planned unit developments in the Rural Residential zone shall comply with BCC 63.305(3). [Ord 26, Ord 90- 0069, Ord 98.005, Ord 2007-0222]

**98.010 Design Standards.** A PUD is a specialized form of subdivision. A proposed PUD shall therefore conform to all subdivision and land partition standards of this code, except that certain standards may be varied as provided by this chapter. [Ord 90-0069]

### **98.105 Density of Development.**

- (1) Parcels or lots smaller than the minimum parcel or lot size may be allowed in a PUD where open space and clustering of parcels or lots are proposed such that the overall density of the PUD is maintained at or less than the level allowed by the minimum parcel or lot size.
- (2) The overall density of the PUD may be increased up to twenty-five (25) percent beyond that allowed by the minimum parcel or lot size where the proposed PUD contains areas allocated for a functional common area, such as a park, or the increase in density is warranted by the design and amenities incorporated in the proposed PUD. [Ord 26, Ord 90-0069, Ord 96-0118]

**98.110 Off-Street Parking.** The number of off-street parking spaces in a PUD may be reduced below the minimum required by this code if the nature of the proposed use warrants such reduction. [Ord 26, Ord 90-0069]

### **98.115 Uses.**

- (1) In addition to permitted uses and uses allowed by conditional use permit in the zone, commercial uses may be allowed in a residential PUD, subject to approval of a conditional use permit. A conditional use permit for a commercial use in an approved PUD shall be approved by the Planning Commission.
- (2) In addition to satisfying the conditional use permit requirements of BCC 53.215, an application for a conditional use permit in a PUD shall demonstrate that:
  - (a) The use is primarily for the service and convenience of residents within the PUD; and
  - (b) Such use shall not change or alter the predominate character of the PUD. [Ord 26, Ord 90-0069]

**98.120 Parks.** A common park area shall be designated in a residential PUD if the PUD is to be comprised of parcels or lots smaller than one acre in size. Such a park area shall be accessible to and available for use by the residents of the development, and shall be suitable for scenic or recreational purposes. [Ord 26, Ord 90-0069]

## **APPLICATION**

**98.205 Letter of Intention.** The applicant shall inform the Planning Official in writing of the intention to



apply for a PUD. A sketch plan and narrative must accompany the letter of intention with sufficient detail to outline the proposed PUD. [Ord 26, Ord 90-0069]

**98.210 Pre-Application Conference.** The Planning Official shall schedule a pre-application conference with the applicant no more than fourteen (14) days following receipt of the letter of intention. Representatives of public and private agencies may attend or may submit such information and recommendations that will assist the applicant in preparing the development plan. The applicant or Planning Official may request additional meetings. [Ord 26, Ord 90-0069]

**98.215 Application for a PUD.** A complete application for a PUD shall include the following documentation:

- (1) Fifteen copies of a PUD map that illustrates the following information:
  - (a) Existing topography, including identification of areas subject to slide, slump, erosion or flooding hazards.
  - (b) The location of existing structures, vegetation and natural features.
  - (c) Proposed location of buildings, roads, driveways and off-street parking.
  - (d) Proposed building types and density.
  - (e) Proposed open space areas, indicating use, ownership, and maintenance.
- (2) A vicinity map showing the plan in relation to the surrounding community.
- (3) A narrative that provides the following development details:
  - (a) Proof of ownership and a legal description of all lands included within the PUD.
  - (b) A phasing schedule, if the PUD will be platted in phases.
  - (c) A description of the general nature of the development.
  - (d) Copies of special agreements, covenants or restrictions governing the use, maintenance, and continued protection of common areas, roads and public facilities. [Ord 7, Ord 90-0069, Ord 92-0092]

## REVIEW

**98.305 Planning Commission Review.** The Planning Commission shall conduct a public hearing for the purpose of reviewing the proposed PUD. The Planning Commission shall consider the provisions of the Development Code, and approve, approve with modifications or conditions, or deny the request. The decision shall be based upon findings justifying the decision. [Ord 26, Ord 90-0069]

**98.310 Signing an Approved PUD Map.** The applicant shall submit to the Planning Official a reproducible copy of the approved PUD map no larger than 11 x 17 inches. The Chairman of the Planning Commission shall sign and date the map. The Planning Official shall retain the map for County records. [Ord 90-0069]

**98.315 Effect of Approval.** No development shall occur in an approved PUD except in conformance with the approved Plan, and any applicable portions of the Development Code. Nonconforming development shall be considered a violation of the Development Code. [Ord 90-0069]

## POST APPROVAL REVIEW

**98.405 Modification of Approved Plan.** A modification of an approved PUD plan which does not deviate by more than ten percent (10%) from approved parcel or lot size or dimensions may be approved by the Planning Official. A plat modification which exceeds this standard but otherwise substantially conforms to

the approved PUD plan may be approved by the Planning Official, subject to notice requirements pursuant to BCC 51.605 to 51.625. A modification which does not substantially conform to the approved PUD plan shall be reviewed pursuant to the procedures for initial PUD approval. [Ord 90-0069, Ord 96-0118]

**98.410 Deadline for Completion.** The applicant or successor in interest shall submit all final plat documents for subdivision of the PUD within two (2) years of the date of approval, or within the guidelines of an approved phasing schedule. [Ord 90-0069]

**98.415 Extension of Deadline.** An applicant may apply for an extension of the PUD deadline. The applicant must demonstrate that the deadline could not be met based upon reasons or conditions outside the applicant's control. The applicant must further demonstrate that substantial construction is reasonably likely to occur within the subsequent two year period or, if the deadline exceeded was established by an approved phasing schedule, must submit an updated phasing schedule for review and approval. An extension shall be subject to review by the Planning Commission. The Planning Commission may approve, amend, or deny the extension. [Ord 90-0069]

**98.420 Monitoring Development.** The Planning Official shall review each approved PUD on an annual basis to determine whether the PUD is developing on schedule or in compliance with its approved Plan. If the Planning Official determines that the PUD is not developing on schedule or in conformance with its approved plan, the Planning Official shall notify the owner in writing that the owner must apply for a modification to the approved plan or for an extension to the PUD deadline within sixty days of the mailing of the notice in order to bring the PUD into compliance. If the owner fails to apply for a modification or extension within that time period, or if the modification or extension is denied, the Planning Official may revoke the PUD. [Ord 26, Ord 90-0069]

## **VACATION OF PUD**

**98.505 Application.** The PUD owner may apply for vacation of all or part of the PUD. If a portion of the PUD has been subdivided, the application must demonstrate that the vacation will not adversely impact road, water, or sewage disposal improvements constructed for the land within the subdivided portion of the PUD. [Ord 90-0069]

**98.510 Planning Commission Review.** The Planning Commission shall review and conduct a public hearing concerning the application for vacation of a PUD. Individual notice of the hearing shall be sent to all persons owning property within the approved PUD. The Planning Commission may approve, deny, or modify the request. [Ord 90-0069]

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## Chapter 99

### General Development Standards

**99.005 Scope.** All development within Benton County, including land partitions, subdivisions and associated land development, and the construction of residential dwellings, industrial, commercial, or public buildings and other accessory structures shall conform to applicable standards of this chapter. [Ord 26, Ord 7, Ord 90-0069]

#### SENSITIVE LAND

**99.105 Description of Sensitive Land.** Certain land characteristics may render a site "sensitive" to development. Sensitive land includes, but is not limited to:

(1) Land having geologic hazard potential or identified by the Oregon Department of Geology and Mineral Industries in Geologic Hazards of Eastern Benton County or Preliminary Earthquake Hazard and Risk Assessment and Water-Induced Landslide Hazard in Benton County, Oregon, hereby incorporated by reference.

(2) Land containing soils subject to high erosion hazard when disturbed, or lands containing soils subject to high shrink-swell potential as identified by the USDA Soil Conservation Service in the Soil Survey of Benton County Area, Oregon, or the Soil Survey of Alsea Area, Oregon, hereby incorporated by reference, or by a successor document produced by the USDA Soil Conservation Service or a successor agency. [Ord 7, Ord 90-0069, Ord 2006-0214]

**99.110 Consideration.** An applicant for a land division or building permit shall consider the geology, topography, soils, vegetation and hydrology of the land when designing a parcel or lot, or siting improvements. The Planning Official or Building Official may impose conditions or modifications necessary to mitigate potential hazards or otherwise provide for compliance with adopted Comprehensive Plan policies, and may require an erosion and sediment control permit. The Planning Official or Building Official shall consider the recommendation of the County Engineer, municipal officials within urban growth boundaries, and other technical sources in the determination of sensitive land conditions and mitigating measures. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2006-0214; Ord 2011-0240]

**99.115 Mitigating Sensitive Land Conditions.** The following guidelines shall be considered in the establishment of conditions and mitigating measures:

(1) Roads should be located in upland areas on benches, ridge tops and gentle slopes as opposed to steep hillsides and narrow canyon bottoms.

(2) Native vegetation removal or soil disturbance should be minimized on moderate and steep slopes and hillsides. If possible, avoid such activities during winter months.

(3) Surface water runoff should be minimized or provide appropriate means for handling surface water runoff.

(4) Techniques should be utilized that minimize erosion, such as protective groundcover.

(5) Engineering assessment of hazard potential should be required for land development.

(6) Geotechnical investigations should be required for roads and foundations in slide-prone areas. [Ord 7, Ord 90-0069]

**99.120 Notice of Highly Expansive Soils.** If the Planning Official or Building Official requires a site soil analysis and site recommendation report as a condition of approval for issuance of a building report for a residence, and the analysis and report identify the presence of highly expansive soils, then prior to issuance of the building permit, such official shall:

- (1) Include a copy of that report with the construction plans filed with the building permit in the Development Department; and
- (2) Record in the County Clerk Lien Record a notice containing a legal description of the property and an informational notice in the following form:

This property has been identified as having highly expansive soils. This condition may create special maintenance requirements. Before signing or accepting any instrument transferring title, persons acquiring title should check with the appropriate planning or building department.

[Ord 90-0069]

### **99.205 Protection of Corvallis Fringe Drainageways.**

(1) Proposed land divisions or the proposed development or enlargement of selected commercial, industrial or public buildings on lots or parcels within the Corvallis Urban Growth Boundary which adjoin or wholly contain drainageways identified in the Corvallis Drainageway Master Plan, hereby incorporated by reference, shall be subject to the provisions of this section. "Selected commercial, industrial, and public buildings" means those projects which would create an impervious area covered by parking, driveways, sidewalks, and the building footprint which exceeds 20,000 square feet or twenty percent (20%) of the parcel or lot size, whichever is less.

(2) Any proposal to create a parcel or lot of less than five (5) acres or to develop or enlarge a selected commercial, industrial or public building shall require the dedication to the City of Corvallis for purposes of flood protection and stormwater conveyance that portion of the drainageway contained within the subject parcel or lot. The area subject to dedication is defined as that portion of the floodway identified on the Corvallis Urban Growth Boundary Floodway Maps adopted pursuant to BCC 83.110(3).

(3) Any proposed partition subject to BCC 99.205(2) or the development or enlargement of a selected commercial, industrial or public building subject to BCC 99.205(1) shall require the dedication of an easement to the City of Corvallis. The easement shall be a minimum of twenty-five (25) feet in width, parallel to and measured from the centerline of the subject drainageway. The purpose of the easement shall be to obtain access to the drainageway for channel maintenance and preservation of riparian vegetation. In the event that an area of riparian vegetation, as evidenced by the presence of non-aquatic species which are generally dependent upon a high seasonal water table, extends beyond the twenty-five (25) foot minimum width of the easement, additional area may be required to be subject to the easement. The easement shall restrict the construction of improvements, removal of riparian vegetation, and the installation of landscaping within the subject area.

(4) Any proposed partition, irrespective of size, which adjoins or wholly contains a drainageway shall be required to record a covenant generally describing an area subject to future dedication as described in BCC 99.205(2) and (3) and reserving the described area for the dedication upon the request of the City of Corvallis. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2021-0304]

### **99.225 Development Activities in Wetlands.**

(1) If the subject property is situated wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory on file in the office of the Benton County Community Development Department, and if a permit from the Department of State Lands has not been issued for the proposed activity, the Planning Official shall provide notice to the Division of State Lands, the applicant, and the owner of record within five days of receipt of the following types of applications:

- (a) Subdivisions, planned unit developments.
- (b) Building permits for new structures.
- (c) Conditional use permits and variances that involve physical alterations to the land or construction of new structures.

(d) Other development permits and approvals that allow physical alteration of the land, including development in the floodplain.

(2) Benton County shall process the land use application and respond to comments from the Department of State Lands consistent with the policies and procedures of that Department. [Ord 90-0069, Ord 2006- 0214]

**99.230 Partitions and Map Amendments in Wetlands.** If the subject property for a partition, or quasi-judicial comprehensive plan map or zoning map amendment, is situated wholly or partially within areas identified as wetlands on the State-wide Wetlands Inventory, the Planning Official shall provide notice to the applicant and the owner of record of the possible presence of wetlands and the potential need for state and federal permits. The Planning Official shall provide the Division of State Lands with a copy of the notification. [Ord 90-0069, Ord 92-0092]

## **PARCEL AND LOT DESIGN**

**99.305 Parcel and Lot Configuration.** The depth to width ratio of every proposed parcel or lot shall not exceed 2.5 to 1, or the least modification of this standard when considering the location, nature of the land and the type of use contemplated. [Ord 7, Ord 90-0069, Ord 96-0118]

**99.310 Flag Lots.** The access strip to a flag lot shall be at least twenty-five (25) feet wide, and shall not exceed 300 feet in length inside an urban growth boundary or 750 feet in length outside an urban growth boundary. [Ord 7, Ord 90-0069]

### **99.315 Resource Buffer Zone.**

(1) A 300 foot setback to adjoining land in a resource zone shall be reserved on any proposed parcel or lot in a nonresource zone, if feasible. In the alternative, a setback less than 300 feet is permitted if it is the least modification of the 300 foot standard and would conform to the prevailing setbacks of the neighborhood. This standard does not apply to a yard adjoining a public road.

(2) If reservation of a 300 foot setback is not feasible, a declaratory statement shall be recorded in the County Deed Records recognizing resource use on adjacent lands. [Ord 26, Ord 90-0069, Ord 96-0118]

## **FRONTAGE**

### **99.405 General Rule of Frontage.**

(1) Every new dwelling and new structure designed for commercial, industrial or public occupancy which is not part of an existing use on a parcel or lot shall be sited on a parcel or lot which has a minimum of twenty-five (25) feet of frontage along an improved public road.

(2) Every proposed parcel or lot in a land division shall have a minimum of twenty-five (25) feet of frontage along an improved public road.

[Ord 7, Ord 90-0069, Ord 96-0118, Ord 2006-0214]

### **99.410 Frontage Exception for New Dwellings.**

(1) In the alternative to compliance with 99.405(1), a new dwelling may be allowed without the required frontage if:

(a) The parcel or lot has no physical frontage on a public road right-of-way; or

(b) The roadway within the adjoining public road right-of-way has not been constructed to County Secondary Road Standards in BCC 99.515(4); or

(c) The parcel or lot is unable to achieve access to an adjoining right-of-way due to physical constraints such as terrain or water bodies, or due to legal constraints such as restrictions contained within the title records or conditions previously imposed by the County.

(2) A building permit for a proposed dwelling which qualifies for an exception pursuant to BCC 99.410(1) may be issued if:

- (a) The applicant submits evidence of an easement of record which provides for access across private property between the subject property and an improved public roadway; or
- (b) If the parcel or lot fronts or obtains access via an unimproved or substandard roadway within a public right-of-way, the applicant causes the roadway to be improved to County Secondary Road Standards in BCC 99.515(4). [Ord 90-0069, Ord 96-0118]

**99.415 Frontage Exception for Partitions.**

(1) A partition to create a parcel or lot which does not conform to BCC 99.405 may be approved if all of the following criteria are met:

- (a) Not more than six (6) parcels or lots including the proposed parcel or lot obtain access via an existing private road or street. Parcels or lots used exclusively for resource use shall not be considered;
- (b) The easement is a minimum of fifty (50) feet in width and no more than 1,250 feet in length measured from the point of intersection with a public road or street to the proposed access point on the proposed parcel or lot. The minimum easement width may be reduced below fifty feet if not more than three parcels or lots could potentially be served by the easement;
- (c) The existing private road or street intersects a public road or street which meets County Secondary Road Standards contained in BCC 99.515(4); and
- (d) The existing private road or street is improved to County Secondary Road Standards contained in BCC 99.515(4) for the total number of non-resource parcels or lots served by the easement.

(2) In lieu of compliance with BCC 99.415(1)(d), an applicant may submit for recording a covenant recognizing the requirement for improvements to the private roadway prior to the issuance of a building permit on the proposed parcel(s) or lot(s) and identifying the estimated cost of construction of improvements as determined by a professional engineer or a licensed road building contractor.

(3) The applicant must submit evidence of an easement granting to the applicant, and the applicant's heirs and successors the rights and privileges to use the easement, and must also submit a covenant binding the same to participate in the maintenance of improvements within the easement.

(4) A proposed parcel or lot zoned for and primarily engaged in a resource use shall be exempted from the provisions of this Section except that the applicant shall submit evidence of an easement of record which provides for access across private property between the subject property and an improved public roadway.

(5) A private road or street which does not comply with BCC 99.415(1)(a) and (b) shall be dedicated to the public and improved to public road standards prior to further partitioning of land using the road for access.

(6) If the proposed partition which creates a proposed private roadway is located within an urban growth boundary, the applicant shall submit for recording a signed covenant reserving the easement containing the proposed private road or street for future dedication and a non-remonstrance agreement for the formation of a local improvement district. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

**99.420** [Ord 90-0069, repealed by Ord 92-0092]

**99.430 Multiple Frontage.** Where a parcel or lot has frontage and legal access on more than one road, whether public or private, the functional classifications of each road shall be used to determine the access location. Exception can be made where factors such as terrain or other obstacles prevent obtaining practical access via the preferred roadway.

(1) Where a parcel or lot has frontage on a private road and either an arterial or collector road, the private road shall be used for access and a covenant waiving access rights to the collector or arterial road shall be entered into by the applicant.

- (2) Where a parcel or lot has frontage on a local public road and either an arterial or collector road, the local road shall be used for access and a covenant waiving access rights to the collector or arterial road entered into by the applicant.
- (3) Where a parcel or lot has frontage on a private road and a local public road, either may be used for access.
- (4) Where a parcel or lot has frontage on two local public roads, either road may be used for access. [Ord 90-0069, Ord 96-0118]

## **ROADS AND DRIVEWAYS**

### **99.505 Dedication of Right-of-Way.**

- (1) An applicant for a partition within an urban growth boundary may be required to dedicate right-of-way as a condition of approval to provide for the future development or improvement of existing and planned transportation facilities in accordance with adopted Comprehensive Plan policies and requirements.
- (2) Where an existing road right-of-way does not comply with the minimum County standard for the applicable road classification, an applicant for a partition located in a non-resource zone shall dedicate to the County sufficient right-of-way to meet the minimum County road standard along the frontage of the parcel or lot being divided. Such dedication shall occur prior to final approval of the partition. Such dedication will not be required:
  - (a) Where the applicant signs a covenant to be recorded in County Deed Records waiving building rights until such time as sufficient right-of-way is dedicated or otherwise acquired; or
  - (b) Where the partition does not result in the creation of one or more developable parcels or lots. A newly created parcel or lot shall not be considered developable if no new dwelling or use can be located on the parcel or lot without further partitioning or without first obtaining a conditional use permit.
- (3) Property acquired for public road purposes shall be surveyed and monumented by the County. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

### **99.510 Road Approach Permits.**

- (1) If a new road approach is proposed, the applicant shall obtain a road approach permit prior to construction of the road approach. If the proposed road approach would connect to a State highway, the permit shall be obtained from the State Highway Division. If the proposed road approach would connect to any other public road, the permit shall be acquired from Benton County. A road approach permit is not required for the construction of an approach connecting with a private road or street.
- (2) A new road approach shall be constructed in accordance with the specifications prescribed by the County Engineer or the State Highway Division. The specifications shall be related to the use of the driveway, the nature of the adjoining public road, and the characteristics of drainage structure at the selected location.
- (3) An occupancy permit or final inspection approval required in accordance with the State Building Code shall not be issued for any structure on a parcel or lot with a road approach which was installed in violation of permit requirements, specifications or conditions. [Ord 90-0069]

**99.515 Road Design and Construction Standards.** (1) Schematic layout of proposed public and private roads or streets shall adhere to the following general guidelines:

- (a) Streets should be aligned to join with planned collector and arterial streets and/or existing streets.
- (b) Streets should be designed to respect topography and meet all applicable engineering standards.
- (c) Intersections shall be approximate or actual right angles.



- (d) Surface drainage shall be toward the intersecting street or through a drainage easement on abutting parcels or lots.
  - (e) Cul-de-sacs shall end with a minimum turning radius of 45 feet; however, for cul-de-sacs less than 200 feet in length within areas zoned for single-family residential use, an alternative design ("T", "Y", or other) or location may be approved by the County Engineer.
  - (f) Cul-de-sacs in excess of 900 feet in length within commercial or industrial areas or which serve more than 20 residential parcels or lots shall provide a secondary means of access for emergency use (fire lane).
  - (g) Dead-end streets shall be designed to connect with future streets on adjacent property. A temporary turn-around may be required.
  - (h) The County may reserve a one foot wide strip of public road right-of-way adjoining private land for the purpose of controlling access.
  - (i) Development containing more than twenty (20) parcels or lots shall contain multiple points of access into the development.
  - (j) Geometric design will follow AASHTO: A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS & STREETS, 1984 ED., standards, except when the County Engineer finds terrain or other conditions making it impossible or unfeasible to do so.
- (2) All roads within existing or proposed public rights-of-way located outside an Urban Growth Boundary shall be designed and constructed pursuant to the Rural Design Criteria identified in Table I and Figure II. Plans and construction shall be approved by the County Engineer.
- (3) All roads within existing or proposed public right-of-way located within an Urban Growth Boundary shall be designed and constructed pursuant to Urban Design Criteria identified in Table II and Figure III. Plans shall be reviewed and approved by the County Engineer in consultation with public works staff of the appropriate city.
- (4) A private road or street created by partition, or an existing private or public road which provides for access to parcels or lots created by partition shall be improved to the following County Secondary Road Standards. Required plans and construction of improvements shall be inspected and approved by the County Engineer, and the applicant shall pay an engineering review fee.
- (a) The road base shall be not less than that required to accommodate a twenty (20) foot wide road with minimum slopes for drainage improvements specified in Figure I.
  - (b) The road grade shall not exceed twelve percent (12%). Road sections under 100 feet in length which are paved may have grades to a maximum of seventeen percent (17%).
  - (c) The graveled surface shall be at least sixteen (16) feet in width for a road serving only two parcels or lots, and twenty (20) feet in width for a road serving three or more parcels or lots.
  - (d) The standards for sub-base, aggregate, compaction and vehicle turnout and turnarounds shall conform to the guidelines in Figure I.
- (5) For the protection of the public interest, the County Engineer may require improvements in excess of adopted standards, if terrain or other conditions warrant such a change.
- (6) Additional off-site improvements may be required as a conditions of land division if it is found by the Planning Official, County Engineer, Planning Commission or Board of Commissioners that the land division will have a significant impact on the level of service or maintenance costs for existing roads, drainage, or other public facilities.

[Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118]

**TABLE I, RURAL DESIGN STANDARDS**

Local road standards are designated as RL-1, RL-2 and RL-3. Collector standards are designated as RC-1 and RC-2. Arterial standards are designated as RA-1 and RA-2.

<u>Projected Standard</u>	<u>Zones</u>	<u>ADT</u>	<u>Projected DHV</u>	<u>Minimum ROW</u>	<u>Surface Width</u>	<u>Paving Material</u>	<u>Crushed Base Equivalent</u>
RL-1	Resource	0-100	<30/hr	50 ft	18 ft	AC,PCC, APM	18 inches
RL-2	Dead end RR	0-200	<30/hr	50 ft	18 ft	AC,PCC APM	18 inches
RL-3	Resource, RR <1,000ft	100-750	<100/hr	60 ft	20 ft	4 inch AC,PCC	18 inches
RC-1	Resource	100-750	<100/hr	60 ft	20 ft	4 inch AC,PCC	18 inches
RC-2	Resource, RR	750-2000	<300/hr	60-70ft	24 ft	4 inch AC,PCC	20 inches
RA-1	All zones	1000-5000	<900/hr	80 ft	24-34ft	6 inch AC,PCC	20 inches
RA-2	All zones	>5000	>900/hr	100 ft	50-70ft	6 inch AC,PCC	24 inches
		<u>Maximum</u>	<u>Bike</u>	<u>Min. Curve</u>	<u>Design</u>		<u>Road</u>
<u>Standard</u>	<u>Shoulder</u>	<u>Grade</u>	<u>Path</u>	<u>Radius</u>	<u>Speed</u>	<u>Parking</u>	<u>Approach</u>
RL-1	4 ft gravel	17%	None	200 ft	30 mph	Limited Emergency	Shared 400ft gap
RL-2	4 ft gravel	15%	None	200 ft	30 mph	Parking Allowed	Shared 250ft gap
RL-3	5 ft paved	15%	RR Zone Class III	250 ft	30 mph	Limited Emergency	Shared 450ft gap
RC-1	5 ft paved	12%	RR Zone Class III	500 ft	45 mph	Emergency Only	Shared 400ft gap
RC-2	5 ft paved	10%	RR Zone Class III	760 ft	45 mph	Emergency Only	Shared 400ft gap
RA-1	6 ft paved	5%-8%	All zones Class III	800 ft	50 mph	Emergency Only	None
RA-2	6ft-12ft paved	4%-6%	All zones Class III	800 ft	50 mph	Emergency Only	None

**TABLE II, URBAN DESIGN STANDARDS**

Local road standards are designated as UL-1, UL-2 and UL-3. The collector standard is designated as UC-1. Arterial standards are designated as UA-1 and UA-2.

<b><u>Standard</u></b>	<b><u>Zones</u></b>	<b><u>Projected ADT</u></b>	<b><u>Projected DHV</u></b>	<b><u>Minimum ROW</u></b>	<b><u>Surface Width</u></b>	<b><u>Paving Material</u></b>	<b><u>Crushed Base Equivalent</u></b>
UL-1	UR RR2/PUD	0-200	<30/hr	50-60 ft	24 ft	AC,PCC	12 inches
UL-2	UR/PUD	0-750	<100/hr	60 ft	28 ft	AC,PCC	16 inches
UL-3	UR/PUD, C,I	0-1,000	<300/hr	60 ft	34 ft	AC,PCC	16 inches
UC-1	UR/PUD, C,I	750-2000	<600/hr	60-70ft	36 ft	AC,PCC	18 inches
UA-1	All zones	1000-5000	<900/hr	80 ft	40-52ft	AC,PCC	18 inches
UA-2	All zones	>5000	>900/hr	80-100ft	50-70ft	AC,PCC	24 inches

<b><u>Standard</u></b>	<b><u>Shoulder</u></b>	<b><u>Grade</u></b>	<b><u>Bikepath</u></b>	<b><u>Radius</u></b>	<b><u>Speed</u></b>	<b><u>Parking</u></b>	<b><u>Approach</u></b>
UL-1	Std.C&G Mountable PCC	15%	5 ft side No path	200 ft	30 mph	None	100 ft apart
UL-2	Std.C&G Mountable PCC	15%	5 ft side No path	250 ft	30 mph	One side only	100 ft apart
UL-3	Std.C&G	10%	5 ft side No path	275 ft	30 mph	Both sides if UR	100 ft apart
UC-1	Std.C&G	10%	6 ft side 4 ft path	600 ft	45 mph	None	Shared 100 ft apart
UA-1	Std.C&G	5%-8%	6 ft side 4 ft path	800 ft	50 mph	None	Left turn refuge
UA-2	Std.C&G	4%-6%	6 ft side 4 ft path	800 ft	50 mph	None	Left turn refuge

Figure I, County Secondary Road Section

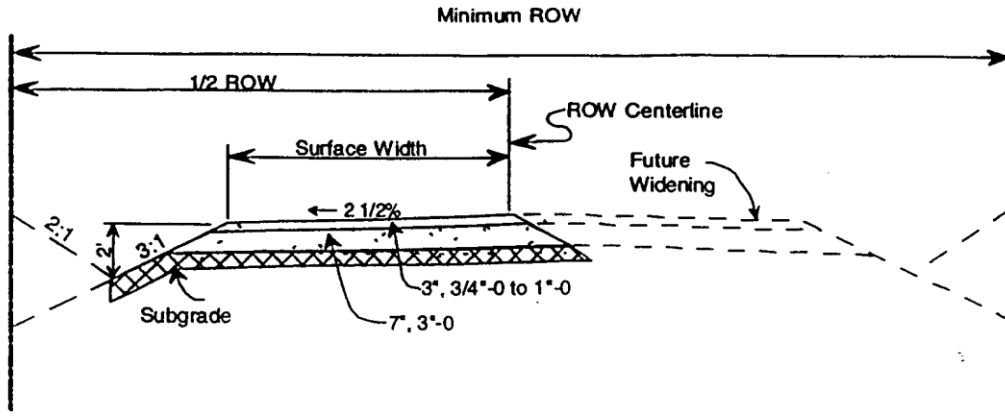


Figure II, Rural Standard Road Section

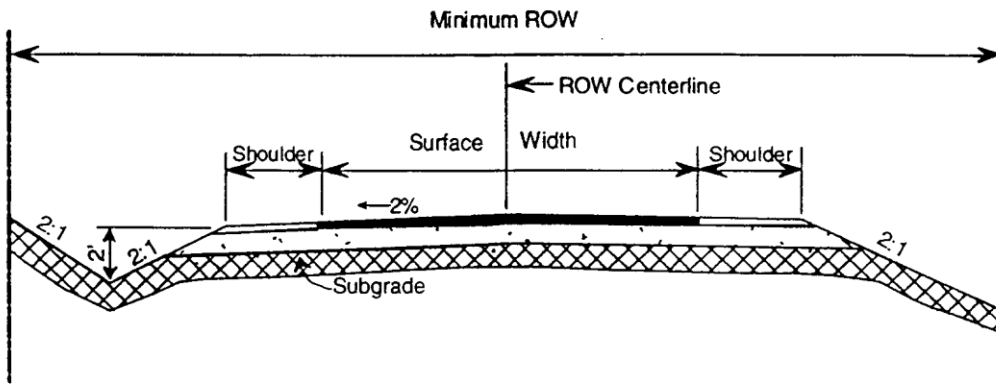
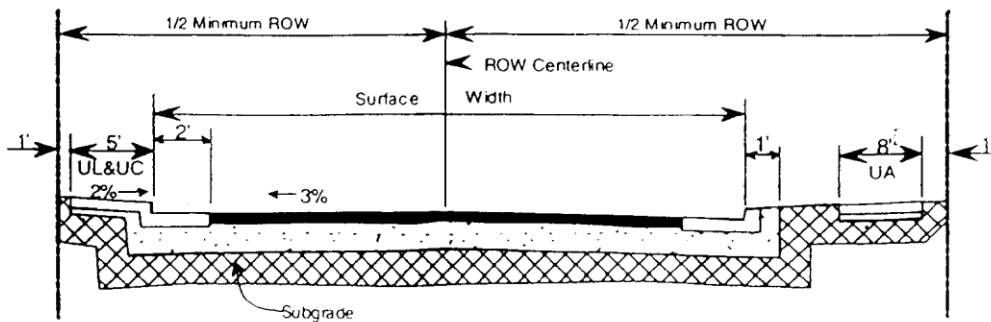


Figure III, Urban Standard Road Section



Standard 3' curb width

**99.520 Improvements in a Public Right-of-Way.** An applicant intending to construct or upgrade a roadway within a public right-of-way shall be responsible for design and installation of all improvements within the public road right-of-way. Such improvements shall commence from an existing improved public roadway and continue to the subject property and twenty-five (25) feet along the frontage of the proposed parcel or lot, or to the private driveway serving the building site, whichever is greater. Required plans and construction of improvements shall be inspected and approved by the County Engineer. [Ord 90-0069, Ord 96-0118]

**99.525 Annexation to a Road District.** The landowner of a parcel or lot contiguous to, but not within a road district, shall submit a petition to annex to said district if the applicant requests access to a public road maintained by such district. The petition to annex shall be submitted prior to final approval of a land partition or prior to issuance of a permit to construct or place a residential dwelling, or commercial, industrial, or public building. [Ord 90-0069, Ord 96-0118]

**99.530 Participation in a Future Road Improvement District.** If a proposed land division or use will result in a measurable singular or cumulative effect on the capacity of any adjoining roadway, the applicant may be required to sign and submit for recording into the County Deed Records a covenant agreeing to participate in a future road improvement district. The effect of the proposed land division or use shall be based on the character of the use, the existing road conditions including the unutilized and unreserved capacity of the roadway, and the capacity of the roadway based upon adopted roadway standards for the functional classification of the road as designated in the Comprehensive Plan. A traffic analysis shall include the most recent average daily traffic count data. The covenant shall be binding for a period not to exceed twenty (20) years. [Ord90-0069]

## **FIRE PROTECTION**

**99.605 Annexation to Fire District Required.** If a proposed parcel or lot in a non-resource zone abuts a rural fire protection district, the applicant shall petition for and obtain annexation to the district prior to final approval of a land division. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2006-0214]

## **STORMWATER MANAGEMENT**

**99.650 Definitions.** As used in BCC 99.650 through 99.680:

- (1) **“County Engineer”** means the County Engineer or the authority designated by the Public Works Director.
- (2) **“Disturbed Area”** means land area subject to ground-disturbing activities.
- (3) **“Ground-disturbing Activity”** means an activity that exposes, works or redistributes soil, including but not limited to excavating, filling, stockpiling, grading, grubbing, or clearing.
- (4) **“Impervious Surface”** means a surface that prevents stormwater from infiltrating the soil, and includes but is not limited to such elements as roads, driveways, parking lots, walks, patios, and roofs.
- (5) **“Interim control measures”** mean short term erosion and sediment control practices to remedy immediate issues as deemed necessary by Benton County.
- (6) **“Manual”** means the required erosion and sediment control measures designated in the “Benton County Stormwater Management Guide” or its successor document.
- (7) **“Non-structural Controls”** means long-term stormwater management techniques and installations that do not include constructing facilities or other stormwater infrastructure; examples include natural drainage, bio-swales, and vegetation preservation.
- (8) **“Responsible Party”** means the party who shall be legally responsible for compliance with the requirements of BCC 99.650 through 99.680. The responsible party shall be the owner of property upon which ground disturbing activities occur, even if the property owner designates others to perform work on the property owner’s behalf. In the case of activities performed within an easement

or right-of-way, the person causing the work to be performed shall be the responsible party.

- (9) **“Structural Controls”** means constructed facilities and other infrastructure related to long-term stormwater management.

[Ord 2011-0240]

### **99.660 Erosion and Sediment Control**

- (1) **Purpose:** The purpose of this section is to:
- (a) Preserve and enhance the health, safety, welfare, financial investment in public and private infrastructure, private property value, and the quality of life of the inhabitants of Benton County by minimizing the risk of flooding, erosion, sedimentation, and other stormwater impacts; and
  - (b) Maintain or improve water quality within Benton County as required under State and Federal National Pollution Discharge Elimination System law.
- (2) **Applicability.** The provisions of this section shall apply to all unincorporated areas of Benton County.
- (3) **Activities Requiring Erosion and Sediment Control Permit.**
- (a) The responsible party shall obtain an Erosion and Sediment Control (ESC) Permit from Benton County prior to initiation of ground-disturbing activities (except those activities listed in (4) below), if both (A) and (B) are met:
    - (A) The ground-disturbing activities are associated with:
      - (i) Construction or land uses that require a permit or other review by Benton County; and
      - (ii) any of the following:
        - (a) Construction of a public or private road, driveway, or structure; or
        - (b) Site preparation, associated installations (such as a septic system drainfield, ground-source heat pump, or tennis court), landscaping, and other ground-disturbing activities related to such construction.
    - (B) The total area disturbed will be:
      - (i) 1 acre or more; or
      - (ii) Less than 1 acre if the ground-disturbing activity is part of a larger common plan of development or sale that will involve a total disturbed area of 1 acre or more. An ESC Permit may be waived for a phased activity in which the cumulative disturbed area is 1 acre or larger if all individual phases disturb less than 1 acre of land and each phase is fully and permanently stabilized prior to initiation of ground disturbance on a subsequent phase.
  - (b) All activities shall comply with the Benton County Illicit Discharge Detection and Elimination Code, whether or not the activity requires an Erosion and Sediment Control Permit.
  - (c) The responsible party shall also comply with other local, state and federal erosion control regulations that may apply.
- (4) **Exempt Activities.** The following activities are exempt from the permit requirement in subsection 3(a):
- (a) Accepted farm practices, not including construction of buildings;
  - (b) Forest practices performed pursuant to the Oregon Forest Practices Rules;
  - (c) Excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;

- (d) Emergency measures to protect life, property, public infrastructure, or essential services, in which case an ESC Permit shall be obtained as soon as possible after-the-fact;
  - (e) Mining activities performed pursuant to applicable state permit requirements.
  - (f) Activities, conducted by public agencies, that meet or exceed state or federal standards for erosion and sediment control.
- (5) **Permit Application.** The applicant and/or responsible party shall submit the following:
- (a) Erosion and Sediment Control Application form;
  - (b) Erosion and Sediment Control Plan demonstrating compliance with the requirements of this section. The plan shall be prepared by an individual(s) with sufficient erosion and sediment control training and qualification to design an erosion and sediment control plan compliant with this code section. The Erosion and Sediment Control Plan for a disturbed area of more than 5 acres shall be prepared by a licensed engineer with relevant experience, or an Oregon Certified Professional in Erosion and Sediment Control.
  - (c) Fee(s) established by the Board of County Commissioners;
  - (d) Other documents deemed appropriate by the County Engineer and/or Planning Official.
- (6) **Level of Potential Impact**
- (a) The required erosion and sediment control Best Management Practices (BMPs) shall correspond to the level of potential impact of the proposed project as determined using the following table. The County Engineer and/or Planning Official may require a different level of erosion and sediment control due to factors including but not limited to: proximity to known landslides, steep slopes in the vicinity, and protected conservation areas.
  - (b) Unless determined otherwise by the County Engineer and/or Planning Official, the column with two or more checks shall be the required level of erosion control, and in the case of one check in each column, the medium level shall be required. A subdivision shall require a “high” level of erosion control, unless deemed otherwise by the County Engineer.
  - (c) The categories of Low, Medium and High correspond to required BMPs listed in the “Benton County Stormwater Management Guide” or its successor document.

Site Conditions	Required Level of Erosion Control:		
	Low	Medium	High
<p><b>Distance between the work site and the nearest Sensitive Area down-slope or at the same elevation. Sensitive Areas include:</b></p> <p>(a) Wetlands identified on a National, State or Local Wetland Inventory, or identified as Potential Wetland on Benton County's wetland reference map;</p> <p>(b) Stream Channel top of bank;</p> <p>(c) Riparian Area protected pursuant to Development Code provisions;</p> <p>(d) Upland Prairie and Oak Savannah protected pursuant to BCC Chapter 88;</p> <p>(e) Potential Habitat for Fender's blue butterfly as identified in the Prairie Species Habitat Conservation Plan.</p>	More than 300 feet	100 to 300 feet	Within 100 feet
<b>Average slope across the disturbed area.</b>	0 to 3.9 percent	4 to 10 percent	More than 10 percent
<b>Erodibility of predominant soil type, determined from NRCS Soil Survey of Benton County, Oregon (or successor document)</b>	Low Erodibility (K value <0.24)	Medium Erodibility (K value 0.24 to 0.40)	High Erodibility (K value > 0.40)

**(7) Permit Review and Approval.**

- (a) An Erosion and Sediment Control Permit may be issued upon determination by the County Engineer that the submitted materials demonstrate compliance with the Manual and the applicable Best Management Practices (BMPs) identified pursuant to Section (6). To address specific conditions of a given site, the County Engineer may require additional or modified BMPs.
- (b) Issuance or denial of an Erosion and Sediment Control Permit is not a land use decision and is not subject to the requirements of a land use decision including but not limited to BCC 51.535, BCC 51.605 through 51.625, and BCC 51.805 through 51.840.

**(8) Permit Period of Validity; Renewal.**

- (a) An Erosion and Sediment Control Permit shall be valid for one year from the date of issuance.
- (b) The responsible party shall request permit renewal if final inspection approval pursuant to subsection (12) of this section has not been obtained prior to expiration of the permit.
- (c) Expiration of an ESC Permit that has not received final inspection approval shall be considered a violation of this code pursuant to BCC 99.680.



- (d) **Permit Renewal:** The responsible party shall submit a permit renewal application form and fee at least 30 days prior to expiration of the current permit. The County Engineer or Planning Official shall review the request and the current status of erosion and sediment control at the site and shall approve the request if conditions are substantially consistent with the original Erosion and Sediment Control Plan. If the County Engineer or Planning Official determines that conditions have changed such that the original Erosion and Sediment Control Plan no longer adequately addresses erosion and sediment control needs, the responsible party shall within 14 days of such determination submit the application and materials for a new Erosion and Sediment Control Permit.
- (9) **Permit Extension.** If, during the first 11 months after issuance of an ESC Permit no ground disturbance has occurred and no County site inspections have been performed, the permittee may submit written request for an extension of the period of validity. Such request shall be submitted 30 days prior to the expiration date of the ESC Permit. There will be no fee for such an extension. The County Engineer or Planning Official may grant a one-time extension for up to one year, but shall not approve an extension if the conditions of the permit or of this code section are being violated.
- (10) **Transfer of Ownership.** Permits are non-transferable. The transfer of a property to a new owner requires that a new permit be obtained prior to the initiation or continuation of ground-disturbing activities, even though said activities may have been authorized under the permit approved for the previous owner.
- (11) **Implementation Requirements.**
- (a) Erosion and Sediment Control Plan approval is required prior to clearing or grading. No ground disturbing activity requiring an Erosion and Sediment Control Permit shall be undertaken prior to County approval and issuance of the Erosion and Sediment Control Permit.
- (b) In cases where erosion or sedimentation is occurring due to ground-disturbing activities, the responsible party shall immediately install interim control measures to stabilize the condition and minimize sediment leaving the site. Within 5 working days of the responsible party or those working on behalf of the responsible party becoming aware of the erosion, the responsible party shall provide for County review new plans, or revisions to existing plans, that demonstrate adequate erosion and sediment control. Upon County approval of the plans, the new measures described shall be immediately implemented.
- (c) The responsible party shall ensure that:
- (A) The provisions of the Erosion and Sediment Control Plan are implemented in a timely manner;
- (B) No visible or measurable amount of sediment has entered, or is likely to enter, the public stormwater system and surface waters;
- (C) During active construction in rainy weather, a qualified individual shall daily inspect erosion and sediment control measures and shall ensure the control measures are maintained, adjusted, repaired and/or replaced so that they function properly without interruption, and shall ensure that immediate action is taken to correct any deficiencies.
- (D) Eroded sediment shall be removed immediately from pavement surfaces, off-site areas, and from surface water conveyances, including storm drainage inlets, ditches and culverts. In the event that sediment enters a wetland or stream, the responsible party's qualified designee shall immediately contact Benton County Public Works.
- (E) Water containing sediment shall not be flushed into the storm water management system, wetlands or streams without first passing through an approved sediment filtering facility, device, or other County approved structure.
- (F) When required by Benton County, the responsible party shall maintain written records of all

site inspections of erosion and sediment control measures. These shall be provided to the County upon request.

- (G) Inspections by Benton County to certify that measures are installed in accordance with the Erosion and Sediment Control Permit shall be requested by the responsible party at the times specified in the Erosion and Sediment Control Permit.

(12) **Inspections by Benton County; Right of Entry.**

- (a) Benton County will perform the following inspections pursuant to an issued Erosion and Sediment Control Permit:
  - (A) An initial inspection of installed erosion and sediment control BMPs;
  - (B) Interim inspections as deemed necessary by the County.
  - (C) A final inspection, to verify completion of all erosion and sediment control BMPs, permanent stabilization of the site, and the required clean up of erosion and sediment control materials.
- (b) The responsible party shall obtain inspections from the County as specified in the Erosion and Sediment Control Permit and shall take immediate action to correct any deficiencies noted by the County.
- (c) The County may enter property at any time to investigate compliance with the requirements of this Code.

(13) **Correction of Ineffective Erosion and Sediment Control Measures.** If the facilities and techniques approved by the Erosion and Sediment Control Permit are not effective or not sufficient to meet the purpose of this section, Benton County may require the following. Failure to make required corrections in a timely manner shall be a violation subject to BCC 99.680.

- (a) On-site modifications to the erosion and sediment control measures; and/or
- (b) A revised plan:
  - (A) The revised Erosion and Sediment Control Plan shall be provided by the responsible party within 5 working days of Benton County notifying the responsible party and/or those conducting ground disturbing activities on behalf of the responsible party.
  - (B) The responsible party shall fully implement the revised plan within 3 working days of approval by Benton County.
  - (C) In cases where serious erosion is occurring, as determined by Benton County, the County may require immediate installation of interim control measures, before submittal of the revised Erosion and Sediment Control Plan.

[Ord 2011-0240]

**99.670 Long-Term Stormwater Management**

- (1) **Purpose:** Establish stormwater management requirements and controls to protect and safeguard the health, safety, welfare, financial investment in public and private infrastructure, and private property value, and minimize flooding in areas where structural and non-structural stormwater management is required to improve water quality and manage long term stormwater runoff from new development and redevelopment projects that result in ground disturbance of 1 acre or more.
- (2) **Applicability.** Land development within the Corvallis Federal Urbanized Area or within the Urban Fringe of the City of Corvallis or City of Philomath shall comply with the requirements of this section. Areas outside the Federal Urbanized Area and Corvallis and Philomath Urban Growth Boundaries may require structural and non-structural stormwater controls, including low-impact development (LID) methods, when deemed necessary by the County Engineer.

(3) **Permit Required.**

(a) The property owner shall obtain from Benton County a Stormwater Site Plan approval prior to initiation of ground-disturbing activities if both (A) and (B) are met (exceptions are listed in subsection (b)):

(A) The ground-disturbing activities are associated with:

- (i) Construction or land uses that require a permit or other review by Benton County; and
- (ii) any of the following:
  - (1) Construction of a public or private road, driveway, or structure; or
  - (2) Site preparation, associated installations (such as a septic system drainfield, ground-source heat pump, or tennis court), landscaping, and other ground-disturbing activities related to new development or redevelopment construction.

(B) The total area of:

- (i) ground disturbance will be:
  - (1) 1 acre or more; or
  - (2) Less than 1 acre if the ground-disturbing activity is part of a larger common plan of development or sale that will involve a total disturbed area of 1 acre or more. Benton County shall conduct a Common Plan of Development Review to determine applicability; or
- (ii) impervious surface upon completion of the project will be in excess of 25,000 square feet.

(b) **Exempt Activities.** The following activities are exempt from the permit requirement in subsection 3(a):

- (A) Accepted farm practices, not including construction of buildings;
- (B) Forest practices performed pursuant to the Oregon Forest Practices Rules;
- (C) Excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
- (D) Emergency measures to protect life, property, public infrastructure, or essential services, in which case a Stormwater Site Plan approval shall be obtained as soon as possible after-the-fact;
- (E) Fish passage, stream enhancement, and wildlife habitat projects that comply with local, state and federal standards and permit requirements, provided that evidence of such compliance is submitted to Benton County Public Works prior to initiation of the activity;
- (F) Repairs to any stormwater facility as deemed necessary by Benton County.
- (G) Mining activities performed pursuant to applicable state permit requirements
- (H) Activities, conducted by public agencies, that meet or exceed state or federal standards for post-construction stormwater management.

(4) **Permit Procedures and Requirements**

(a) The property owner shall submit:

- (A) Stormwater Site Plan Application form;
- (B) Stormwater Site Plan and additional documentation deemed appropriate by the County Engineer and/or Planning Official to demonstrate compliance with this section; and
- (C) Fee(s) established by the Board of County Commissioners.

- (D) The Stormwater Site Plan shall be designed, stamped and signed by a licensed geologist or engineer, or other professional recognized by Benton County.
- (b) A Stormwater Site Plan approval may be issued upon determination by the County Engineer that the submitted materials demonstrate compliance with the requirements of this section. To address specific conditions of a given site, the County Engineer may require modification to the proposed Site Plan and/or to the standard requirements of this section.
- (c) Issuance or denial of a Stormwater Site Plan approval is not a land use decision and is not subject to the requirements of a land use decision including but not limited to BCC 51.535, BCC 51.605 through 51.625, and BCC 51.805 through 51.840.
- (5) **Stormwater Management Design Criteria.** When required by subsection (3) of this section, the applicant shall implement stormwater management measures as specified in the “Benton County Stormwater Management Guide”, as interpreted by the County Engineer. Within the urban growth boundary of an incorporated city, structural and non-structural requirements will be consistent with the current standards of the pertinent city.
- (6) **Improvements Agreement.** Required stormwater infrastructure shall be subject to the Improvements Agreement provisions of BCC 99.905 through 99.925.
- (7) **Long-term Maintenance and Repair of Stormwater Facilities.**
  - (a) Required stormwater facilities shall be constructed by the property owner.
  - (b) Stormwater facilities shall be maintained to current Benton County stormwater facility maintenance standards.
  - (c) For a stormwater facility serving a single property:
    - (A) The stormwater facility shall be located on the property that is being served, unless an alternative arrangement is approved by the County Engineer as adequately preserving long-term viability of the facility;
    - (B) The property owner shall be responsible to maintain the proper functioning of the facility pursuant to subsection (c);
    - (C) A restrictive covenant shall be placed on the property. In the covenant the property owner shall agree to:
      - (i) not transfer the facility separately from the rest of the property, except with the express approval of Benton County;
      - (ii) maintain the facility to its original design specifications;
      - (iii) correct any functional deficiencies identified by Benton County;
  - (d) For a stormwater facility serving multiple properties the County Engineer will require the procedure in either (A) or (B) to be completed. Sole discretion in the selection resides with Benton County.
    - (A) Maintenance Fee:
      - (i) Prior to or at final development approval, or at the completion of the warranty period pursuant to BCC 99.925, the property owner or developer shall provide a one-time payment to Benton County Public Works of the amount determined by the County Engineer to be necessary to ensure maintenance of the facility until the facility is annexed to a city and responsibility is assumed by that city. This one-time payment shall be in addition to any performance guarantee or warranty required under BCC 99.915 or 99.925.
      - (ii) The property owner shall grant an easement to Benton County for access to and maintenance, repair and operation of the stormwater facility.

- (iii) Once the facility has completed the warranty period pursuant to BCC 99.925, Benton County Public Works will conduct routine maintenance on the facility as funding allows. Renovation, replacement, or repair exceeding routine maintenance will require some other local funding mechanism, such as a local improvement district.

(B) Maintenance District:

- (i) Prior to sale or transfer of lots, the property owner shall establish a local improvement district or other lawful district comprising all benefitted properties and designed to provide for the long-term maintenance, repair and/or renovation of the storm water management system.

[Ord 2011-0240]

**99.680 Enforcement, Stop-work Orders, and Penalties.** In addition to all other remedies available under Benton County Code, violations of BCC 99.650 through 99.670 shall be subject to the following enforcement procedures.

- (1) Each violation of the stormwater provisions, or any failure to carry out the conditions of any Permit approval granted pursuant to the stormwater provisions, shall be unlawful and a civil infraction subject to the enforcement provisions of Benton County Code Chapter 31.
- (2) The owner of the property upon which the violation occurs shall be responsible for mitigating resulting impacts, or, in the case of activities performed within an easement or right-of-way, the person causing the work to be performed shall be the responsible party.
- (3) In addition to and separate from those penalties available under Benton County Code Chapter 31, Benton County may enforce the following penalties:
  - (a) The Planning Official may refuse to accept any land use application or may suspend or revoke any active land use authorization.
  - (b) The Building Official shall not accept any building permit application and shall not approve occupancy of any structure on a property which is subject to a notice of noncompliance or a stop work order pursuant to this section.
  - (c) The Planning Official or County Engineer may issue a notice of noncompliance, pursuant to subsection (E) below, to the property owner requiring corrective action. If the responsible party fails to take the specified action within 24 hours, the Planning Official or County Engineer may issue a civil citation to the property owner pursuant to Chapter 31. The notice of noncompliance shall include:
    - (A) The location of the construction project;
    - (B) A description of the construction project;
    - (C) A description of the non-compliance;
    - (D) A description of the corrective action(s) that shall be taken by the responsible party;
    - (E) The amount of penalty that will be imposed if corrective action is not taken within 24 hours; and
    - (F) A statement that information regarding the appeal process will be made available upon request.
  - (d) The Planning Official or County Engineer may issue a stop work order, pursuant to subsection (E) below, requiring that all work, except work directly related to the elimination of a violation or necessary to correct a health or safety hazard, be immediately and completely stopped. Work shall not be resumed until such time as the Planning Official or County Engineer gives specific approval in writing. Failure to abide by the stop work order shall be grounds for the Planning Official or County Engineer pursuant to Chapter 31 to issue a civil citation to the property owner

pursuant to Chapter 31.

- (A) The stop work order shall include:
  - (i) Date of order;
  - (ii) Permit number if applicable;
  - (iii) Project location;
  - (iv) Description of all violations; and
  - (v) The remedies that must be completed before work may resume.
- (e) A notice of noncompliance or stop work order shall be in writing and posted in a conspicuous location at the site. In addition, the County shall send a copy to the property owner by certified mail.
  - (A) No person may remove, obscure, mutilate or otherwise damage a stop work order.
  - (B) A notice of noncompliance or stop work order shall be effective upon posting or upon oral delivery under (C) below.
  - (C) When an emergency condition exists, the Planning Official or the County Engineer or the designee of either may issue a notice of noncompliance or stop work order orally. The Planning Official or County Engineer shall then issue a written notice as described above within 24 hours of the oral order.
  - (D) Upon the property owner's completion of corrective actions necessary to bring the property into compliance with this code, the Planning Official or County Engineer shall issue a written notice of compliance to the property owner.

[Ord 2011-0240]

## **SEWAGE DISPOSAL**

**99.705 Sewage Disposal.** Each proposed dwelling, parcel, lot, or place of public occupancy shall be served by a sewage disposal system which complies with the requirements of the Oregon Department of Environmental Quality requirements. [Ord 90-0069, Ord 96-0118]

**99.710 Site Evaluation Required.** An applicant for a land division or building permit shall obtain site suitability evaluation approval from the County Sanitarian prior to the issuance of a permit or final approval of a land partition indicating that each proposed parcel or lot is capable of accommodating a standard septic system or approved alternative system. [Ord 7, Ord 90-0069, Ord 96-0118]

**99.715 Existing System Evaluation.** If the subject parcel or lot contains an existing septic system, the applicant for any land use decision shall request the County Sanitarian to evaluate the existing septic system. If the County Sanitarian recommends a repair to the system, provisions of the repair permit shall be fulfilled prior to final approval of a building permit or a land partition. [Ord 90-0069, Ord 96-0118]

### **99.720 Existing Community/Municipal Systems.**

(1) If connection to an existing community or municipal sewage system is proposed, an applicant shall submit evidence that the service agency is mutually bound and able to serve the development.

(2) Where the parcels or lots in a proposed subdivision will be served by an existing community or municipal sewage system, the governing body of the community or municipal sewage system shall certify on the subdivision plat that a sewage disposal system will be available to the parcel or lot line of each parcel or lot depicted on the subdivision plat.

(3) Connections to community or municipal sewage systems shall be limited to uses within urban growth boundaries or approved systems within rural service centers or rural residential areas. [Ord 7, Ord 90-0069, Ord 92-0092]

**99.725 New Community/Municipal Systems.** If a new community or municipal sewage system is proposed, the applicant shall prepare and submit preliminary plans and justification for the system pursuant to provisions of this code for review and County approval. Additional review of formal plans and specifications will be required by the County Engineer, the Department of Environmental Quality and a municipality, if within an urban growth boundary. Capacity of the system shall be limited to that necessary to serve existing and permitted growth within the area. The applicant shall show proof of the long-term financial responsibility and financing for construction and operation of the sewer system in accordance with this code, except where a district or municipality has accepted the responsibility. [Ord 7, Ord 90-0069]

**99.735 Exemption to Site Evaluation Requirement.**

(1) An applicant for a partition of land zoned for resource use, but not including a partition of land intended for non-resource use, shall not be required to obtain a site evaluation pursuant to BCC 99.710 as a condition of final approval of the partition. A site evaluation will be required prior to development of a use requiring a septic system or as a condition of a permit to establish a resource related residence or other resource related use.

(2) An applicant for a partition may petition for an exemption to BCC 99.710 requiring a septic site approval as a condition of final approval of the partition. The parcel or lot proposed for the exemption shall contain at least ten (10) acres or two and one-half (2.5) times the minimum parcel or lot size for the zone in which it is located, whichever is less. The applicant shall demonstrate to the satisfaction of the County Sanitarian that the soils on the parcel or lot are generally suitable for a standard septic system or approved alternative system. As a condition of the exemption, the applicant shall sign and submit for recording in the County Deed Records a covenant waiving residential building rights from the parcel or lot approved for the exemption. This covenant shall be terminated when the provisions set forth in BCC 99.710 are met.

(3) An applicant for a partition under BCC 64.305(2) may petition for an exemption to BCC 99.710. The applicant shall submit a statement demonstrating to the satisfaction of the Planning Official, in consultation with County Environmental Health, that sewage disposal would not be necessary currently nor in the future for the proposed use. As a condition of the exemption, the applicant shall sign and submit for recording in the County Deed Records a covenant waiving sewage-generating building rights and uses from the parcel or lot approved for the exemption, as well as stating that no septic site approval has been obtained and the feasibility of such is unknown.

(4) Notwithstanding BCC 99.735(2), no exception shall be granted for any proposed parcel or lot situated within an area designated on the Environmental Survey Priority List as adopted by order of the Board of Commissioners. [Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2012-0244]

**WATER SUPPLY**

**99.800 Purpose.** The provisions of BCC 99.800 through 99.850 are intended to protect the health of current and future residents of Benton County by ensuring an adequate supply of potable water for the long term. These provisions are further intended to reduce conflicts between users of groundwater and contribute to ecological sustainability. [Ord 2007-0223, Ord 2007-0224]

**99.805 Water Source.** Each proposed dwelling, parcel, lot, or place of public occupancy shall be served by one of the water sources listed in subsections (1) through (4) of this section. A water source for a new dwelling or place of public occupancy shall comply with BCC 99.810 to 99.820. A water source for a proposed lot or parcel shall comply with BCC 99.840 to 99.850.

(1) A new or existing well or improved spring.

(2) An existing well or improved spring that currently serves one or two other dwellings. The applicant shall secure an easement to supply water from the owner of the land on which the water source is located and to permit the maintenance of all physical improvements of the water system. Such easement shall be reviewed and approved by the County Sanitarian.

(3) An existing public water system, if authorized by the water system's representative.

(4) A new or expanded community water system, if approved pursuant to this code, and determined to be in conformance with the standards and plan specifications for water systems by the County Sanitarian and County Engineer. Expansion of the Camp Adair (Adair Village) water system or any new community water systems within the boundaries of Adair Village Rural Fire Protection District shall provide sufficient fire flows determined to be necessary by the district's fire chief in accordance with the Uniform Fire Code, as adopted by the District and the County. [Ord 90-0069, Ord 96-0118, Ord 2007-0223, Ord 2007-0224]

**99.810 Water Well Standards for Building Permit.** If a well is proposed for a dwelling or place of public occupancy, the applicant shall submit the following evidence that the well yields an adequate flow of microbiologically safe water for each dwelling or use:

- (1) A well log prepared by a licensed well driller and filed with the State Watermaster indicating the well is a drilled, cased well.
- (2) A water quality test prepared by an approved testing laboratory showing that the well meets the Environmental Protection Agency (EPA) standards for coliform bacteria and nitrates. If water quality does not meet the EPA standards, the Benton County Health Department must approve plans for water treatment.
- (3) A Minor Pump Test pursuant to BCC 99.845 performed within the past year. However, notwithstanding BCC 99.845(4), wells on other properties need not be tested. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2007-0223, Ord 2007-0224]

**99.820 Spring Standards.** If a spring is proposed to be used as a water source for a dwelling or place of public occupancy, the applicant shall secure water rights for the spring or show that it is exempt, as well as design and construct improvements to protect the spring from contamination and to collect the water for distribution. This shall be done as follows:

- (1) The property owner shall obtain a water-use permit as part of the process of obtaining a water right certificate from the Oregon Water Resources Department or obtain documentation from the Oregon Water Resources Department that the spring is exempt from the requirement for establishing water rights.
- (2) A licensed engineer shall prepare plans and specifications for spring improvements including:
  - (a) Perimeter fence.
  - (b) Surface water diversion ditch.
  - (c) Infiltration gallery.
  - (d) Spring box or collection basin including an overflow pipe and drainage valve.
  - (e) Minimum storage of 1350 gallons per household to be served..
  - (f) Filtration (at a minimum, that necessary to achieve the water quality standards in subsection (5)(b) of this section).
  - (g) Disinfection (at a minimum, that necessary to achieve the water quality standards in subsection (5)(b) of this section)
  - (h) Distribution
  - (i) Additional requirements as specified by the water-use permit issued by the Oregon Water Resources Department.
- (3) The applicant shall construct the improvements according to the approved plans and specifications.
- (4) The applicant shall submit the following evidence that the spring yields an adequate flow of microbiologically safe water for each dwelling, lot, or parcel to be served.
  - (a) A flow test producing a minimum of:
    - (A) 5 gallons per minute per dwelling served if the test is performed between July 15 and October 15; or



(B) 10 gallons per minute per dwelling served if the test is performed between October 16 and July 14, with the condition that the test be repeated during the next July 15 to October 15 period and any necessary storage or mitigation of interference be implemented based on the latter pump test.

(b) A water quality test prepared by an approved testing laboratory showing that the spring meets Environmental Protection Agency (EPA) standards for coliform bacteria and nitrates (54 FR 27544-27568). If water quality does not meet the EPA standards, water treatment will be required. In addition, a water quality test for Giardia will be required if coliform bacteria is present.

(5) The County Sanitarian may require additional testing and review as necessary to ensure the potability and sustainability of the water source. [Ord 2007-0223, Ord 2007-0224]

**99.825 Public Water System Standards.** If a public water system is proposed, the following standards shall apply.

(1) If a new system is proposed, the applicant shall prepare and submit formal plans and specifications for review and approval by the Department of Human Services Drinking Water program, the County Sanitarian, and County Engineer in accordance with ORS Chapter 333 and OAR Chapter 448.

(2) If connection to an existing system is proposed, the applicant shall prepare and submit formal plans and specifications for review and approval by the County Engineer and the engineer representing the water system.

(3) If a gross density of greater than two units per acre is proposed, a minimum flow of 500 gallons per minute for fire protection with a continuous flow for a minimum of 30 minutes shall be provided.

(4) The applicant shall show proof of long-term financial responsibility and financing for construction and adoption of the water system in accordance with this code except where a district or municipality has accepted the responsibility.

(5) Where the parcels or lots in a proposed subdivision will obtain water from a public water system, whether a municipal or privately-owned water system, the governing body of the public water system shall certify on the subdivision plat that water will be available to the parcel or lot line of each parcel or lot depicted on the subdivision plat.

[Ord 7, Ord 90-0069, Ord 92-0092, Ord 2007-0223, Ord 2007-0224]

**99.835 Exemption to Water Supply Requirements.**

(1) An applicant for a partition shall not be required to document a water supply pursuant to BCC 99.840 to 99.850 if:

(a) The land is zoned for resource use and is not:

(A) Intended for or approved for non-resource use; or,

(B) Being partitioned pursuant to an approved claim under ORS 197.352 (Ballot Measure 37; 2004),

(b) Evidence of a water source pursuant to BCC 99.810 shall be required prior to development of a use requiring a potable water supply.

(2) An applicant for a partition other than a series partition may petition for an exemption to BCC 99.805 to 99.825 requiring documentation of a water supply. The parcel or lot proposed for the exemption shall contain at least ten (10) acres or two and one-half (2.5) times the minimum parcel or lot size for the zone in which it is located, whichever is less. The applicant shall demonstrate to the satisfaction of the County Sanitarian that groundwater supplies in the surrounding area are of sufficient quantity and quality as demonstrated by information on the production of wells in the vicinity and other technical sources. As a condition of the exemption, the applicant shall sign and submit for recording

in the County Deed Records a covenant waiving residential building rights from the parcel or lot approved for the exemption. This covenant shall be terminated when the provisions set forth in BCC 99.805 to 99.825 are met.

- (3) An applicant for a partition under BCC 64.305(2) may petition for an exemption to BCC 99.805, 99.840, and 99.850 requiring documentation of a water supply for that parcel. The applicant shall submit a statement demonstrating to the satisfaction of the Planning Official, in consultation with County Environmental Health and the County Engineer, that water would not be necessary currently nor in the future for the proposed use. As a condition of the exemption, the applicant shall sign and submit for recording in the County Deed Records a covenant waiving residential and other water-requiring building rights from the parcel or lot approved for the exemption, as well as stating that the quantity and quality of any water that might be available in the future and the impacts on adjacent property owners is unknown.
- (4) Notwithstanding BCC 99.835(2), no exception shall be granted for any proposed parcel or lot situated within an area designated on the Environmental Survey Priority List as adopted by order of the Board of Commissioners.

[Ord 2007-0223, Ord 2007-0224, Ord 2012-0244]

**99.840 Water Supply for Land Divisions.**

**General**

- (1) An application for subdivision or partition shall:
  - (a) Demonstrate that the water supply meets the quality standards in BCC 99.810(2)
  - (b) Submit with the subdivision or partition application the testing and evaluation specified in the following table:

	<b>Aquifer Characteristics**</b>					
	<b>Bedrock</b>			<b>Alluvium</b>		
	<b>Minor Pump Test</b> <i>99.845(3)</i>	<b>Major Pump Test</b> <i>99.845(5)</i>	<b>Hydro-geologic Study</b> <i>99.850</i>	<b>Minor Pump Test</b> <i>99.845(3)</i>	<b>Major Pump Test</b> <i>99.845(5)</i>	<b>Hydro-geologic Study</b> <i>99.850</i>
<b>Partition</b> with an average parcel size:						
less than 5 acres		<b>X</b>			<b>X</b>	
5 acres to less than 10 acres		<b>X</b>			<b>X</b>	
10 acres or larger	<b>X</b>			<b>X</b>		
<b>Subdivision or Series Partition*</b> with an average parcel size:						
less than 5 acres			<b>X</b>			<b>X</b>
5 acres to less than 10 acres			<b>X</b>		<b>X</b>	
10 acres to less than 20 acres		<b>X</b>		<b>X</b>		
20 acres or larger	<b>X</b>			<b>X</b>		

\*For purposes of this section, the requirements for a “series partition” apply at the time of application for the first partition of a lot or parcel containing acreage exceeding six times the

minimum parcel size.

\*\*Aquifer characteristics shall be determined from the best available data. In the absence of better data, the determination shall be made for the Willamette Basin using the map titled “Hydrogeologic Factors that Limit Groundwater Supply in the Willamette Basin, Oregon”, produced by Oregon Water Resources Department, and for other basins using the map titled “Generalized Groundwater Geology”, produced by the U.S. Geological Survey.

- (c) In areas where inadequate water supply has been documented through well repairs, dry wells, previous hydrogeologic study, or state or county designation of groundwater concern (for example a groundwater management area or limited groundwater area), Benton County may modify the testing requirements to more specifically address the evidence of inadequate supply. [Ord 2007-0223, Ord 2007-0224]

**99.845 Pump Test.** When a pump test is required by BCC 99.840, the test shall be performed to the specifications of this section.

- (1) A controlled pump test shall be performed by an Oregon licensed: well driller, pump installer, geologist, engineering geologist, or professional engineer.
  - (a) The combination of well yield and storage for residential use shall meet the following minimum standards:

Sustained Yield Determination (gpm for each dwelling to be served)		Gallons of Storage Required (for each dwelling to be served)
October 16 through July 14	July 15 through October 15	
5 or more	5 or more	None
<5 (retest July 15 through October 15)	3 to 4.99	500
	2 to 2.99	1000
	1 to 1.99	1500

- (a) “Sustained yield” means the production rate at which the water level in the well remains constant for the duration of the pump test.
- (b) The required storage may be a combination of tanks and well storage. Wells with less than a 5 gpm sustainable yield tested between October 16 and July 14 shall be retested between July 15 and October 15 to determine the storage requirements.
- (2) If interference is identified through the pump test, Benton County may require any, all or none of the following, depending on the nature of the interference and the characteristics of the well involved:
  - (a) Require the applicant to modify the proposed production well, relocate it, or propose enforceable water use limitations or other mechanisms to ensure the production well does not interfere with existing wells in the observation area;
  - (b) Require the applicant to perform additional testing or monitoring to demonstrate compliance with this requirement; or
  - (c) Deny the application.
  - (d) For purposes of this section, “interference” is defined as drawdown in a senior well attributable to pumping of a junior well, where the drawdown, under normal and anticipated withdrawal rates, is likely to reduce available water in the senior well below 5 gallons per minute (July 15 through October 14) or 10 gallons per minute (October 16 to July 14).

### **Minor Pump Test**

- (3) For the production well and all wells within the observation area defined in subsection (4) of this section, submit a record of:
  - (a) Static water level prior to pumping;
  - (b) The rate of sustained yield (in the production well only) and drawdown (in the other wells) at half-hour intervals during a pump test of at least four hours;
  - (c) Recovery of water level, in the subject well and closest other well drawing from the same aquifer, at half-hour intervals for four hours after pumping stops or until water level returns to 90% of pre-pumping static water level.
- (4) The observation area for a minor pump test shall consist of all wells on the subject property and adjacent properties, and all wells within 100 feet of the subject property. Testing is not required for a property in different ownership from the subject property if permission is denied by the affected property owner. The applicant shall document that a request for permission to test wells on that property was made and was rejected by the property owner.

### **Major Pump Test**

- (5) At least 10 days prior to a major pump test, the applicant shall mail notification stating the date and time the pump test will be performed, to enable neighboring owners to monitor their own wells. The notification shall be mailed to owners of all properties within the distances listed in subsections (a) and (b) of this section. Properties served by municipal water supply need not be notified. The applicant shall provide documentation of such mailing.
  - (a) Properties within 250 feet of the subject property where the subject property is within an urban growth boundary;
  - (b) Properties within 1000 feet of the subject property where the subject property is outside an urban growth boundary.
- (6) Submit a record of:
  - (a) Static water level (prior to pumping) in the production well and all wells within the observation area defined in subsection (7) of this section;
  - (b) The rate of sustained yield in the production well, and drawdown in at least two observation wells within drawing from the same aquifer, recorded at half-hour intervals during a pump test of at least twelve hours;
  - (c) Recovery of water level in the two observation wells, recorded at half-hour intervals for four hours after pumping stops or until water level returns to 90% of pre-pumping static water level.
- (7) The observation area for a major pump test shall consist of all wells on the subject property and adjacent properties, and all wells within 500 feet of the subject property. Testing of wells on adjacent properties, described below, is not required for a property in different ownership from the subject property if permission is denied by the affected property owner. The applicant shall document that a request for permission to test wells on that property was made and was rejected by the property owner. [Ord 2007-0223, Ord 2007-0224]

**99.850 Hydrogeologic Study.** When a hydrogeologic study is required by BCC 99.840, the study shall be performed to the specifications of this section.

- (1) A study proposal shall be submitted to Benton County for review. The study shall not be initiated without approval of the proposal by the Planning Official in consultation with the County Engineer. The study proposal shall include sufficient detail to demonstrate the study will meet the criteria listed below.

- (2) At least 10 days prior to the pump tests associated with a hydrogeologic study, the applicant shall mail notification stating the date and time the pump test will be performed, to enable neighboring owners to monitor their own wells. The notification shall be mailed to owners of all properties within the distances listed in subsections (a) and (b) of this section. Properties served by municipal water supply need not be notified. The applicant shall provide documentation of such mailing.
  - (a) Properties within 250 feet of the subject property where the subject property is within an urban growth boundary;
  - (b) Properties within 1000 feet of the subject property where the subject property is outside an urban growth boundary.
- (3) The hydrogeologic study shall be prepared as specified in the approved study proposal and submitted to Benton County with the application for the desired land use (*e.g.*, subdivision).
- (4) The study shall:
  - (a) Bear the stamp of a geologist, engineering geologist, or professional engineer who qualifies under ORS 672, registered with the State of Oregon, and who has worked in a professional capacity in the field of groundwater resource management and hydraulics.
  - (b) Include but not be limited to:
    - (A) Analysis of available information regarding:
      - (i) existing wells within 1000 feet of the boundary of the development;
      - (ii) geology of the site;
      - (iii) location of proposed wells;
      - (iv) recharge area;
    - (B) Evaluation of regional groundwater use from available mapping.
    - (C) Establishing water usage rate assumptions for the type of development proposed, and a well production rate necessary to sustain the assumed level of use. For residential subdivision, the usage rates should be on a per dwelling basis, with rates increasing as lot or parcel size increases.
    - (D) Determination of the adequacy of the aquifer to supply the needs of the proposed development, and potential future development drawing from the same aquifer, without adversely impacting adjacent wells.
    - (E) Identify the recharge area, recharge protection zones, and determine the water balance of the system to identify potential short and long term impacts of groundwater withdrawal on the aquifer.
    - (F) Pump tests for a minimum of 48 hours and up to 72 hours as determined necessary by the licensed person designing/performing the study. The pump test shall measure static water level in production and observation wells, drawdown and recharge levels at half-hour intervals at the specified production rate until 90% of static level is achieved.
    - (G) Analysis of testing data shall provide at a minimum coefficient of transmissivity, permeability, storage and the specific yield.

- (H) Recommendations for development design, water usage limitations, monitoring, landscaping, conservation planning, etc., to mitigate impact of the proposed development on the aquifer and existing users of the aquifer. Also, a determination as to whether a water system, as opposed to individual or shared wells, would better protect the groundwater resource.
- (5) The hydrogeologic study shall be reviewed by a geologist, engineering geologist, or professional engineer that qualifies under ORS 672, registered with the State of Oregon, and who has worked in a professional capacity in the field of water resources. Benton County will select the professional who will review the study. The cost of such review shall be added to the land use application fee. The review shall include examination to ensure required elements have been completed, study procedures and assumptions are generally accepted, and all conclusions and recommendations are supported and reasonable.
- (6) Based on the review pursuant to subsection (4) above, and review by the County Engineer and County Planning Official, Benton County may do any or all of the following:
  - (a) adopt some of all of the study recommendations as binding conditions of the land use approval;
  - (b) require additional conditions the County deems necessary to ensure adequate water supply for the proposed use and other users of the aquifer and to avoid aquifer overdraft;
  - (c) require the applicant to submit additional information to demonstrate adequate water supply for the proposed use and other users of the aquifer and to avoid aquifer overdraft;
  - (d) deny the land use application on the basis of inadequate water supply for the proposed use or other users of the aquifer, or aquifer overdraft.

[Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2007-0223, Ord 2007-0224]

## **IMPROVEMENTS AGREEMENT**

**99.905 Improvements Agreement.** When required as a condition of development for a conditional use, partition, subdivision, planned unit development, or stormwater management permit, the applicant shall execute a standard improvements agreement provided by the County Engineer guaranteeing the construction of any required public improvements. The Agreement shall be recorded to put all purchasers and interested parties on notice. The agreement shall provide that:

- (1) If at any time there is a breach in the agreement, the Building Official shall withhold issuance of all building permits within the subdivision or partition until such breaches have been satisfactorily corrected.
- (2) The applicant shall be responsible for installing all required improvements, including, but not limited to, streets, storm drainage, pedestrianways, water system, sewage system, etc., to the standards and specifications approved by the County Engineer and/or Board of Commissioners. All work shall be completed to the County Engineer's approval within 18 months of final plat approval, or when building permits have been issued on fifty percent (50%) of the parcels or lots, whichever comes first. [Ord 90-0069, Ord 92-0092, Ord 96-0118; Ord 2011-0240]

**99.910 Review and Inspections.** Plans for public improvements required as a condition of development shall be submitted for review and approval by the County Engineer. During the installation of improvements, the County Engineer shall conduct periodic inspections of work-in-progress. The County Engineer shall charge a fee for plans review and inspection services as established by Order of the Board of Commissioners. [Ord 90-0069]

### **99.915 Performance Guarantee.**

- (1) The applicant shall file with the County Engineer a performance guarantee to assure full and faithful performance. The guarantee shall be made in one of the following forms:

(a) An escrow of funds, irrevocable sight draft, letter of credit, franchised guarantee or other certification by a reputable lending institution. Such lending institution shall not be directly owned or controlled by the applicant. The amount of funds shall be released only upon authorization of the County Engineer.

(b) A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the County Counsel. The bond shall guarantee to the County that the financial backing is available so that all improvements will be completed and paid for within the time specified in BCC 99.905.

(2) The guarantee shall ensure that the applicant has funds committed in the amount determined by the County Engineer for the purpose of covering the cost of the improvements and repairs, including related engineering and incidental expenses. In the event of default by the applicant, the guarantee shall ensure that the County shall have, upon demand, funds to construct, complete or pay for all improvements or incidental expenses, including improvements full or partially constructed by the County, and bills which are outstanding for work done thereon by any party. [Ord 90-0069]

**99.920 Calling the Guarantee.** If the applicant fails to carry out provisions of the agreement and the County has unreimbursed costs or expenses resulting from such failure, the County shall call on the guarantee for reimbursement. If the amount of the bond or cash deposit exceeds the cost and expense incurred, the remainder shall be released. If the amount of the bond or cash deposit is less than the costs and expense incurred, the applicant shall be liable to the County for the difference. [Ord 90-0069]

**99.925 Warranty.** Upon completion of roadways and other public facilities to County standards and specifications, there shall be a minimum of three year warranty period prior to County consideration of acceptance of maintenance. Before this acceptance, maintenance and repair of public facilities shall be the duty of the applicant, developer, property owner, or of the homeowners association. [Ord 90-0069; Ord 2011-0240]

## Chapter 100

### Planned Unit Development in Corvallis Urban Fringe

#### 100.100 Scope and Purpose.

- (1) All applications for land divisions in the Urban Residential (UR) and Flood Plain Agriculture (FPA) zones within the Corvallis urban growth boundary are subject to the provisions of this chapter. Applications for partitions and subdivisions of land between the Corvallis city limits and urban growth boundary shall comply with the applicable provisions of BCC Chapters 64, 95, 97, and this chapter. The procedures, standards, and criteria in this chapter shall be applied when the requirements in another section of this code are not consistent with the provisions of this chapter.
- (2) The procedures and requirements of this chapter are established to accomplish the following purposes:
  - (a) To insure, to the greatest extent possible, that land within the urban growth boundary is used for or kept available for urban uses;
  - (b) To establish standards that provide for the efficient and orderly transition of land within the urban growth boundary to planned urban uses considering existing natural features and planned future uses;
  - (c) To allow new or innovative design and technology; to promote appropriate land use; to facilitate adequate and economic provision of public and / or private services and facilities; and
  - (d) To protect the natural features of the site.
- (3) Creation of a parcel for any of the purposes listed in subsection (a) below is exempt from the requirements of Chapter 100, provided the requirements of this section are met.
  - (a) To be exempt from Chapter 100, the parcel shall be created for only publicly owned open space; a publicly owned park; a publicly owned recreation facility; or undeveloped open space owned by a nonprofit land conservation organization, until the property is annexed to the city.
  - (b) For a parcel created pursuant to and for the purposes of the provisions in subsection (a) of this section, the property owner shall sign a deed covenant to be recorded into the County Deed Records prior to creation of the parcel prohibiting use of that parcel for residential development or any use other than publicly owned open space, publicly owned park, publicly owned recreation facility or undeveloped open space owned by a not-for-profit land conservation organization, until the property is annexed to the city.
  - (c) Development and use of the property shall be subject to the approval requirements of the zone.
  - (d) A request for an exemption pursuant to this section shall be accompanied by a statement from the public entity or nonprofit land conservation organization proposing to acquire the property indicating intent to acquire the property and describing the proposed use of the property.
  - (e) Land divided under this section shall be considered in calculating the number of residential lots or parcels that may be created on the remainder parcel pursuant to BCC 100.205(7).
  - (f) Creation of a parcel under this section does not disqualify the parent parcel from the density bonus provision of BCC 100.205(7)(b); however, a parcel created under this section shall not be used to justify a density bonus if the parcel is sold, rather than donated, to the receiving public entity.

[Ord. 2001-0168, Ord 2005-0209, Ord 2005-0210, Ord 2012-0244]

**100.105 Letter of Intent to Partition or Subdivide.** The applicant shall inform the Planning Official in writing of the intention to apply for a partition or subdivision and request a pre-application conference. A



sketch plan and narrative must accompany the letter of intention with sufficient detail to outline the development plan.

**100.110 Pre-application Conference.** The Planning Official shall schedule a pre-application conference within twenty-one days following receipt of the letter of intention. Representatives of public and private agencies may attend or may submit such information and recommendations that will assist the applicant in preparing the application. The applicant or Planning Official may request additional meetings. The Planning Official shall provide written documentation of the substance of the meeting to the applicant within ten working days after the meeting.

**100.150 Application Requirements.**

- (1) In addition to the development standards and application requirements for partitions and subdivisions contained in Chapters 64, 95, and 97, an application for a land division within the Corvallis urban growth boundary shall contain the following information and documentation:
  - (a) The location of existing structures, including building types, driveways, and off-street parking;
  - (b) The location of all Natural Features identified on the Corvallis Urban Fringe Natural Hazards Map, Riparian Corridors and Wetlands Map, and Significant Vegetation Map;
  - (c) Soils and soil characteristics, including shrink-swell potential, erosion hazard, slide potential, and any other potential limitations, using USDA Soil Conservation Service information or field studies prepared from specific site data;
  - (d) The location of any known sensitive or endangered species of flora or fauna, or significant historic or cultural resource on the property;
  - (e) Any proposed open spaces, including proposed ownership, use, and maintenance;
  - (f) The location of existing utility systems including sanitary sewer, storm sewer, drainageways, and water, where appropriate. Additionally, the location of all planned utility systems including sanitary sewer, storm sewer, drainageways, and water, shown in adopted Corvallis facility plans, and how the proposal can accommodate these facilities;
  - (g) Any proposed significant topographic changes including contours at intervals sufficient to indicate topographic conditions (generally two or five foot contours), including identification of areas subject to slide, slump, erosion or flooding hazards;
  - (h) Any measures proposed to mitigate Code-allowed impacts to natural feature areas shown on the Corvallis Urban Fringe Natural Hazards Map and/or the Riparian Corridors and Wetlands Map;
  - (i) The proposed circulation system including roads, bikeways, and access to roads. Public or private ownership of each facility shall be clearly identified. The current condition of public facilities shall be identified, as well as the proposed standard to which the facility will be improved or constructed by the applicant. Additionally, the location of all planned roads and trails shown in adopted Corvallis facility plans such as the Corvallis Transportation Plan and the Parks and Recreation Master Plan, and how the proposal can accommodate these facilities;
  - (j) The proposed plan for managing stormwater from the site, consistent with BCC 99.650 through 99.680;
  - (k) An urban conversion plan, as described in BCC 64.310;
  - (l) A narrative that provides:
    - (A) A phased development schedule if the development is to be phased;
    - (B) A schedule for construction of all improvements;
    - (C) The proposed method for providing water supply for each parcel or lot;

- (D) The proposed method for providing sewage disposal for each parcel or lot;
  - (E) A description of the impact of the proposed development on water, sewer, fire protection, law enforcement, schools, hospitals, solid waste disposal, and other services;
  - (F) A description of all community facilities or systems including a maintenance program for all proposed systems; and
  - (G) A copy of tentative covenants, conditions, and restrictions, if any, proposed by the applicant.
  - (H) A description of the impact of the proposed development on Natural Features shown on the Corvallis Urban Fringe Natural Hazards Map and/or Riparian Corridors and Wetlands Map, and the proposed methods for protecting these Natural Features.
- (2) The Planning Official, in the application process, may waive any of the requirements of this section where it is determined, in the judgment of the Planning Official, that the information is not necessary to properly evaluate the application. The Planning Official may require additional information deemed necessary to evaluate the application.

[Ord 2005-0209, Ord 2005-0210, Ord 2005-0211, Ord 2011-0240, Ord 2012-0244]

### **100.205 Design Standards.**

- (1) **General.** An application for a Planned Unit Development shall comply with all applicable development standards of this code.
- (2) **Access.**
- (a) Streets and roads interior to the proposed development shall be located and aligned according to the provisions of Chapter 99, Chapter 83 (Floodplain Management Overlay) and Chapter 88 (Natural Features Overlay in the Corvallis Urban Fringe) and constructed to the applicable urban standards identified in the Corvallis Transportation Plan and Corvallis Land Development Code. Streets and roads interior to the development shall be constructed to full urban standards concurrent with the approval of the land division and development of the property except as provided in BCC 100.205(2)(b) or (d).
  - (b) In exceptional circumstances, the approving authority may allow construction of streets and roads to a transitional standard. Construction to a transitional standard may only be allowed if the approving authority finds that exceptional engineering considerations make it not practical to construct streets or roads to urban standards concurrent with the proposed development. The approving authority shall consult with the City and County Engineers in making a determination to allow a transitional standard.
  - (c) If an exception is granted under 100.205(2)(b), the approving authority shall impose conditions that specify how streets will be improved to the applicable urban standards with subsequent development of the property. The conditions of approval shall provide mechanisms that insure that the financial obligation of present and future owners of the property to fully finance the construction of streets and roads to the applicable urban standards is met. These conditions may include but are not limited to:
    - (A) Posting of a financial guarantee;
    - (B) An irrevocable petition for public improvements;
    - (C) An agreement to participate in future Improvement Districts;
    - (D) Specific provisions in covenants, conditions, and restrictions that specify the future

obligation of the property owner(s) and which are attached to the property; and

(E) Other means deemed necessary and appropriate by the approving authority.

- (d) If a street or road is allowed by Benton County to be constructed within a Natural Feature mapped on the Corvallis Urban Fringe Natural Hazards Map and/or Riparian Corridors and Wetlands Map, the road shall be constructed with 10-ft. wide travel lanes and with no on-street parking and no park strips for the portion of the street within the natural feature.

**(3) Sewage Disposal.**

- (a) The sewage disposal system for the proposed development shall comply with the provisions of Chapter 99 and the requirements of the Oregon Department of Environmental Quality. The sewage disposal area may be located on-site or off-site. A deed restriction shall be placed on each property in the PUD which requires structures with individual sewage disposal systems to be connected to the City of Corvallis sewer system at the expense of the property owner when it is available to the property and which also states the owner, or future owner, will not remonstrate against connection to the city sewage disposal system.
- (b) Conditions of approval shall require installation of city standard sewer lines and other applicable system improvements that can be connected to the city sewage system when the property is annexed to the city or when city services otherwise become available.
- (c) The requirement for installation of city standard sewer lines and other system improvements may be modified or waived if the approving authority finds that, because of the length of time before city services may be available, site characteristics, and / or engineering considerations, it is not practical to install these improvements concurrent with the proposed development. The approving authority shall consult with the County Sanitarian and City and County Engineers in making this determination. In all cases, community systems, if utilized, shall be constructed to City of Corvallis standards and designed to be incorporated into the City system. Community systems, if utilized by the developer, will be designed and constructed to City of Corvallis standards, be publicly owned and maintained, or if privately owned, provide adequate assurances through a formal agreement that provide for adequate levels of ongoing maintenance and operation and will ensure a smooth transition to public ownership.
- (d) If city standard sewer lines and other applicable system improvements are not required with approval of the application, the approving authority shall impose conditions that provide mechanisms that insure, to the greatest extent possible, that the financial obligation of present and future owners of the property to fully finance urban level sewage system improvements is met. These conditions may include but are not limited to:
- (A) Posting of a financial guarantee;
- (B) An irrevocable petition for public improvements;
- (C) An agreement to participate in future Improvement Districts;
- (D) Specific provisions in covenants, conditions, and restrictions that specify the future obligation of the property owner(s) and which are attached to the property; and
- (E) Other means deemed necessary and appropriate by the approving authority.

**(4) Water.**

- (a) The water supply for the development shall comply with the provisions of Chapter 99 and the requirements of the Oregon Health Division. The water source may be located on-site or off-site. A deed restriction shall be placed on each property in the PUD which requires the water supply to be connected to the City of Corvallis water system at the expense of the property

owner when it is available to the property and which also states the owner, or future owner, will not remonstrate against connection to the city water system.

- (b) Conditions of approval shall require the installation of city standard water lines and other applicable system improvements that can be connected to the city water system when the property is annexed to the city or when city services otherwise become available.
- (c) The requirement for installation of city standard water lines and other system improvements may be modified or waived if the approving authority finds that, because of the length of time before city services may be available, site characteristics, and / or engineering considerations, it is not practical to install these improvements concurrent with the proposed development. The approving authority shall consult with the County Sanitarian and City and County Engineers in making this determination. In all cases, community systems, if utilized, shall be constructed to City of Corvallis standards and designed to be incorporated into the City system. Community systems, if utilized by the developer, will be designed and constructed to City of Corvallis standards, be publicly owned and maintained, or if privately owned, provide adequate assurances through a formal agreement that provide for adequate levels of ongoing maintenance and operation and will ensure a smooth transition to public ownership.
- (d) If city standard water lines and other applicable system improvements that can be connected to the city water system are not required with the approval of the application, the approving authority shall impose conditions that insure, to the greatest extent possible, that the financial obligation of present and future owners of the property to fully finance urban level water system improvements is met. These conditions may include but are not limited to:
  - (A) Posting of a financial guarantee;
  - (B) An irrevocable petition for public improvements;
  - (C) An agreement to participate in future Improvement Districts;
  - (D) Specific provisions in covenants, conditions, and restrictions that specify the future obligation of the property owner(s) and which are attached to the property; and
  - (E) Other means deemed necessary and appropriate by the approving authority.

(5) **Drainage.**

- (a) Natural drainageways necessary to convey storm water through and from the subject property shall be reserved or dedicated to the public for such purposes. The area required to be dedicated or reserved for future drainageway shall be identified as determined by the Corvallis Land Development Code.
- (b) Drainage improvements shall be designed and approved pursuant to BCC 99.650 through 99.680, and shall be constructed to the applicable City of Corvallis urban standards.
- (c) In exceptional circumstances, the approving authority may allow construction of drainage improvements to a transitional standard. Construction to a transitional standard may only be allowed if the approving authority finds that exceptional engineering considerations make it not practical to construct improvements to urban standards concurrent with the proposed development. The approving authority shall consult with the City and County Engineers in making a determination to allow a transitional standard.
- (d) If an exception is granted under 100.205(5)(b), the approving authority shall impose conditions that specify how the drainage system will be improved to the applicable urban standards with subsequent development of the property. The conditions of approval shall provide mechanisms that insure, to the greatest extent possible, that the financial obligation of present and future owners of the property to fully finance urban standard drainage improvements is met. These

conditions may include but are not limited to:

- (A) Posting of a financial guarantee;
- (B) An irrevocable petition for public improvements;
- (C) An agreement to participate in future Improvement Districts;
- (D) Specific provisions in covenants, conditions, and restrictions that specify the future obligation of the property owner(s) and which are attached to the property;
- (E) Other means deemed necessary and appropriate by the approving authority. [Ord 2011-0240]

**(6) Parcel or Lot Size**

(a) Parcels or lots created shall be located in a manner that allows for the orderly and efficient transition of the entire property to urban uses. All parcels or lots shall be designed such that “Highly Protected” Natural Features identified on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map and Significant Vegetation Map are contained entirely on the remainder parcel and/or the exception parcel authorized by subsection (A) of this section. If the number of lots or parcels allowed by the zoning cannot reasonably be accommodated outside of the Significant Vegetation area, then the proposed lots or parcels may include the least amount of Significant Vegetation necessary to allow reasonable layout of the land division. Proposed parcels or lots containing Natural Features shall be designed so that subsequent development will comply with the Natural Features provisions of Chapters 83 and 88. Parcels or lots shall be the minimum size necessary to provide for reasonable development and for the provisions of streets, sewage disposal, water, drainage, and other improvements pursuant to the applicable provisions of this code. Parcels and lots shall contain a minimum of 5,000 square feet and a maximum of 20,000 square feet, except that the remainder parcel resulting from the creation of these parcels and lots need not comply with the 20,000 square foot maximum. In addition, the following exceptions apply:

- (A) A one-time exemption to the maximum parcel size of 20,000 square feet shall be allowed to create one parcel with a minimum size of 1 acre, subject to the following:
  - (i) Only tracts, as defined in BCC 51.020, that are at least 10 acres in the UR-5 and FPA zones or 20 acres in the UR-10 zone shall qualify for such exemption.
  - (ii) All areas on the proposed new exemption parcel that are identified as riparian corridor or wetlands are protected through one of the permanent means listed in BCC 100.205(7)(b)(A)(v).
  - (iii) A parcel or lot created pursuant to this subsection shall count as one of the parcels permitted in subsection (b). All other lots or parcels created pursuant to this chapter shall comply with the minimum and maximum size requirements in subsection (a) above.
  - (iv) The owner of a tract is eligible for only one exemption in subsection (A) above for the entire tract as it existed on November 6, 1998. The remaining portions of the tract will not be eligible for the exemption. As a condition of approval, the owner shall sign a deed covenant to be recorded into the County Deed Records against all lots and parcels contained in the tract as it existed on November 6, 1998. The covenant shall notify all future owners contained in the tract that those lots and parcels shall not be eligible for the exemptions allowed by subsection (A) above.
- (B) A lot or parcel allowed pursuant to BCC 64.305(3).
- (C) Creation of lots or parcels within a UR-2, UR-1, or UR-0.5 zone established pursuant

**(7) Number of Parcels or Lots**

- (a) The maximum number of parcels or lots that may be created from an existing parcel is determined by dividing total acreage of the subject property, as it existed on the effective date of these provisions, November 6, 1998, by the minimum parcel size or the allowable density specified in the zoning district and taking the resulting whole number of parcels or lots. For example: (a) a 29.9 acre parcel in a UR-5 zone could be divided into five lots; and (b) an 89.9 acre parcel in a UR-10 zone could be divided into eight lots. A tract or tracts created for purposes of protecting natural features, providing open space, or other similar purpose, shall be allowed in addition to the allowed number of lots or parcels provided the tract(s) are designated as “not developable” on the plat.
- (b) A density bonus, in addition to the maximum number of parcels or lots prescribed by subsection (a) above, may be approved through the processes described in subsection (A) or subsection (B), below. If density bonuses are claimed pursuant to both subsection (A) and subsection (B), each density bonus shall be justified through actions affecting mutually exclusive land areas.
  - (A) A density bonus shall be allowed in exchange for permanent protection of the entire area of the subject tract designated Highly Protected Natural Resource on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map and Significant Vegetation Map, as follows:
    - (i) For every acre permanently protected (in accordance with the provisions of BCC 100.205(7)(b)(v)(a) through (c)), one additional acre shall be added to the “total acreage” used in the calculation of the maximum number of parcels or lots in subsection (7)(a) of this section.
    - (ii) The maximum increase in allowable parcels or lots through this process shall be 40%.
    - (iii) Additional parcels or lots allowed pursuant to this subsection shall be between 5,000 and 20,000 square feet in size and shall be located outside of all Highly Protected features shown on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map and Significant Vegetation Map.
    - (iv) The additional (whole) parcels or lots allowed pursuant to this subsection may be transferred to other land zoned Urban Residential within the Corvallis Urban Fringe, provided the receiving property is approved for the additional density through the criteria and procedures for a conditional use permit (BCC 53.205 through 53.235), and provided the additional lots or parcels will not impact natural features shown on the Corvallis Urban Fringe Natural Hazards Map, Riparian Corridors and Wetlands Map, and Significant Vegetation Map. Transferred rights will be established through the notice of conditional use approval referencing both the receiving and sending parent parcels. The proposed location and dimensions of the proposed lots or parcels shall be presented at the time of conditional use application; however, actual subdivision or partition may occur at a later time (prior to the expiration date of the conditional use approval).
    - (v) Permanent protection of the Natural Resource area(s) shall be achieved by means of:
      - 1. A conservation easement benefiting, or a gift to, a governmental land management agency or nonprofit corporation organized for the purpose of land or environmental conservation. The applicant shall provide a letter from the benefiting entity demonstrating intent to accept the proposed easement or gift and to manage the land to preserve and/or enhance the natural resource functions identified on the Corvallis Urban Fringe Riparian Corridors and Wetlands Map



- or Significant Vegetation Map, contingent on approval of the proposal;
2. Dedication to Benton County. The applicant shall provide a letter from the Board of Commissioners demonstrating intent to accept the proposed dedication, contingent on approval of the proposal. Benton County is not bound to accept proposed dedications, but will place priority on accepting lands consistent with the mission of the Benton County Parks System Comprehensive Plan or other adopted plans; or
  3. Dedication, or reservation for future easement, to the City of Corvallis. The applicant shall provide a letter from the City of Corvallis stating intent to accept the proposed future easement, contingent on approval of the proposal. A reservation for future easement shall include use restrictions to ensure the natural features are preserved prior to dedication;
- (vi) To be eligible for a density bonus, the area of significant vegetation shall either:
1. Be in essentially the same ecological condition as described for the site in the Corvallis Natural Features Inventory; or
  2. Have been altered through restoration activities consistent with the restoration recommendations for the site contained in the Natural Features Inventory.
- (vii) The provisions allowing a density bonus shall not be available to a property which has been granted compensation or waiver of land use regulation pursuant to Ballot Measure 37.
- (viii) For any property obtaining a density bonus pursuant to this section, the property owner shall sign a covenant waiving all right to claims for compensation or waiver of land use regulation pursuant to Ballot Measure 37.
- (B) A density bonus may be approved through the PUD approval when it is found that the PUD provides amenities, as defined in (i) through (viii) below, that warrant a density bonus. The number of lots may be increased up to twenty-five (25) percent beyond the maximum allowed by the zoning designation prior to any other increases in allowable density (such as pursuant to subsection (A) above). All lots shall conform to all other development standards of this Code. In order for a development to be eligible for a density bonus, it must be demonstrated that the development will provide an overall public benefit beyond the minimum level necessary to support the development of the PUD and beyond what is required by the Benton County Development Code and other applicable regulations, and that the development will provide at least one of the following amenities:
- (i) **Park/Open Space:** A bonus may be allowed if the proposed PUD contains areas allocated for park or recreation use. The park or open space shall be compatible with the applicable City or County Master Plan. If the proposed park is within or abutting the developed area of the PUD, the park shall be developed and dedicated to the City, County or other public entity prior to issuance of building or manufactured home placement permits. If a park or open space is explicitly delineated on an acknowledged City or County Master Plan and is on the undeveloped portion of the property then the land for the park or open space shall be dedicated to the City, County or other public entity as a condition of final plat approval. If the park or open space is not explicitly delineated in the City or County Master Plan, the land for the park need not be dedicated, but only reserved on the final plat. In the latter case, the reservation on the final plat may include limitations on uses within the reserved area to maintain the public park values of the land.
  - (ii) **Trails:** A bonus may be allowed if the proposed PUD contains a trails system

connecting the PUD to public amenities such as other trails, parks and school facilities. The trail shall be compatible with the applicable City or County Master Plan. If the proposed trail is within the developed area of the PUD, the trail shall be developed and dedicated to the City, County or other public entity prior to issuance of building or manufactured home placement permits. If a trail is explicitly delineated on an acknowledged City or County Master Plan and is on the undeveloped portion of the property then the land for the trail shall be dedicated to the City, County or other public entity as a condition of final plat approval. If the trail is not explicitly delineated in the City or County Master Plan, the land for the trail need not be dedicated, but only reserved on the final plat. In the latter case, the reservation on the final plat may include limitations on uses within the reserved area to maintain the public trail values of the land.

- (iii) Infrastructure: A bonus may be allowed if public facilities such as street improvements, or utilities are provided that are in excess of those required under the provisions of this code. The infrastructure elements shall be constructed at the time of the initial PUD development, and shall meet the applicable City or County public improvement standards.
- (iv) Restoration: This bonus may be allowed if the applicant implements a restoration plan for natural features identified on the Corvallis Urban Fringe Natural Hazards Map and/or Riparian Corridors and Wetlands Map. The restoration plan shall include both near-term (the first five years) and long-term (in perpetuity) methods that will be used to ensure restoration is well- established and is managed over time. Financial resources and responsibility shall be clearly defined, to ensure long-term management.
- (v) Urban Development Pattern: This bonus is based on an urban development pattern that proposes all of the lots be 8,000 square feet or smaller laid out in a manner that allows the proposed development to be consistent with the City of Corvallis' Comprehensive Plan designation and Land Development Code provisions.
- (vi) Affordable Housing: This bonus is based on providing affordable housing, as defined in the definition chapter of the City of Corvallis' Land Development Code.
- (vii) Other Amenities: The decision making body and the developer may identify and agree upon other amenities which meet the goal of this provision, through this review and approval process.
- (viii) Covenants: Any amenities, as described above, which are the basis for a density bonus shall be constructed as part of the PUD and accepted by the applicable public agency, or guaranteed by restrictive covenants that run with the land affected by the PUD approval, or by posting of a financial guarantee, an irrevocable petition for public improvements, an agreement to participate in future Improvement Districts, specific provisions in covenants, conditions, and restrictions that specify the future obligation of the property owner(s) and which are attached to the property, or other means deemed necessary and appropriate by the approving authority. Terms of the covenants may include initial commitment of the amenity, on-going maintenance or long term future commitments. The form, content, and terms of the covenants are subject to approval by the County through the PUD approval process.

## **(8) Clustering of Parcels or Lots.**

- (a) Parcels or lots created under the provisions of this chapter shall be clustered except as allowed in



(6)(a)(A) through (C) above. For purposes of this chapter, “cluster” is defined as: “A development technique wherein lots and parcels are generally arranged together along a road, street, or cul-de-sac.”

- (b) The clustering required by subsection (a) of this section may be split into two or more clusters if necessary to avoid or minimize incursion into natural features designated as “High Protection” on the Corvallis Urban Fringe Natural Hazards Map, Riparian Corridors and Wetlands Map and/or Significant Vegetation Map.
  - (c) The land division shall be designed such that any natural features designated as “High Protection” on the Corvallis Urban Fringe Natural Hazards Map, Riparian Corridors and Wetlands Map and Significant Vegetation Map will be located on the remainder parcel or lot, and/or on the exception parcel or lot allowed pursuant to subsection (6)(a)(A) of this section, and will not be located on the clustered parcels or lots.
- (9) **Use of Parcels or Lots.** Subject to the standard approval provisions of this code, all parcels or lots may contain any of the uses permitted in the zoning district, including a single-family residence and accessory uses in the Urban Residential zone.
- (10) **Utilities.** All utilities shall be installed underground by the developer at the time that services are available and prior to road construction, if feasible. If utilities are allowed to be located within Natural Features shown on the Corvallis Urban Fringe Natural Hazards Map and/or Riparian Corridors and Wetlands Map, the utilities shall be located above ground if doing so will reduce the impact to the Natural Features and still be acceptable to the Public Works Director.
- (11) **Service Districts.** Phases of the Planned Development shall identify the parcels or lots that are to be served by service districts for sewage and water systems prior to the provision of city services. Prior to the formation of a service district, the applicant shall submit documentation showing how the district will operate, including finances, rules, and ownership. A review shall be completed by the Planning Official, County Engineer, and County Counsel to determine the feasibility of the district. [Ord 99-0154; 2001- 0168, Ord 2005-0209, Ord 2005-0210, Ord 2005-0211, Ord 2012-0244]

**100.305 Review Procedure.** Applications subject to the provisions of this chapter shall be reviewed pursuant to the applicable procedures for partitions and subdivisions contained in BCC Chapters 95, 97, and 100.

**100.405 Conditions of Approval.** In addition to the applicable conditions of approval for partitions and subdivisions contained in BCC Chapters 95, 97, and 99, the following conditions may be required for approval of Planned Developments within the Corvallis urban growth boundary:

- (1) The approving authority may impose any other conditions deemed necessary to comply with applicable provisions of this code or state or federal law;
- (2) The property owner(s) may be required to enter into agreement(s) providing for guarantees for the future provision of all improvements on the property at full city standards;
- (3) The property owner(s) may be required to enter into a planned development agreement with the county;
- (4) The property owner(s) shall be required to record a covenant prohibiting further division of the parcel or lot until annexation occurs when the parcel or lot, as it existed on the effective date of these provisions (November 6, 1998), has been divided into the maximum number or lots or parcels allowed pursuant to BCC 100.205(6);
- (5) The property owner(s) may be required to annex to existing adjacent service districts, to create new service districts, or to provide an alternative suitable method approved by the approving authority, for the monitoring, maintenance, and repair of the following services:
  - (a) Streets;
  - (b) Street lights;

- (c) Water systems;
  - (d) Sewage disposal systems;
  - (e) Storm drainage;
  - (f) Police services in addition to those normally provided by the Sheriff;
  - (g) Park maintenance and improvements; and
  - (h) Other services determined to be necessary by the approving authority.
- (6) At time of annexation, a public or private service district shall be dissolved upon inspection of improvements and a determination that the system served by the service district meets City standards.

**100.505 Extension of Effective Period.**

An extension of the preliminary approval period for an application subject to the provisions of this chapter shall be subject to the applicable approval extension provisions and procedures of Chapter 95 for partitions and Chapter 97 for subdivisions.

**100.610 Final Plat Approval and Filing.**

Final plat approval and filing shall be subject to the applicable provisions and procedures of Chapter 95 for partitions and Chapter 97 for subdivisions.

**100.615 Final Plat Signatures.**

Final plat signatures shall be subject to the applicable provisions and procedures of Chapter 95 for partitions and Chapter 97 for subdivisions.

**100.620 Final Plat Approval by the Board.**

Final plat approval by the Board of County Commissioners shall be subject to the applicable provisions and procedures of Chapter 95 for partitions and Chapter 97 for subdivisions.

**100.625 Filing the Final Plat.**

The final plat shall be filed subject to the applicable provisions and procedures of Chapter 95 for partitions and Chapter 97 for subdivisions. [Ord 98-0141]

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