



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

August 16, 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Benton County Plan Amendment
DLCD File Number 002-05



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: August 31, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

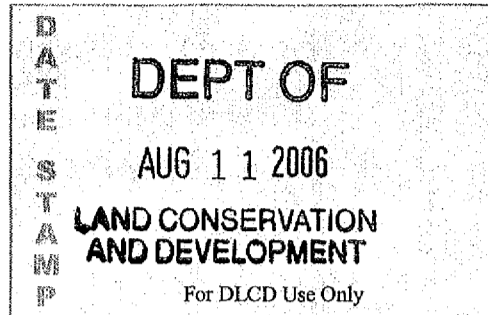
Cc: Doug White, DLCD Community Services Specialist
Marguerite Nabeta, DLCD Regional Representative
Greg Verret, Benton County

<paa> ya



2 Notice of Adoption

THIS FORM **MUST BE MAILED TO DLCD**
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: Benton County Local file number: LU-05-090
Date of Adoption: 8/8/2006 Date Mailed: 8/10/2006
Date original Notice of Proposed Amendment was mailed to DLCD: 12/21/2005

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Various amendments to Development Code: update of farm and forest zones pursuant to changes to statute; updating/amending numerous other sections to improve clarity, workability and efficacy.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Farm use definition modified to recognize nurseries. Notification distances are minimums; intent is to notify all who could be impacted. Added procedures for electronic submittal of comments. Criteria modified for considering property line adjustments resulting in undersized resource-zoned properties. Numerous non-substantive changes (typographical, wording, organization, etc.).

Plan Map Changed from: N/A to: _____
Zone Map Changed from: N/A to: _____
Location: Benton County Acres Involved: N/A
Specify Density: Previous: N/A New: _____

Applicable Statewide Planning Goals: 3, 4.

Was and Exception Adopted? YES NO

DLCD File No.: 002-05(14895)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

- Forty-five (45) days prior to first evidentiary hearing?** Yes No
If no, do the statewide planning goals apply? Yes No
If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

N/A

Local Contact: **Greg Verret** Phone: **(541) 766-6294** Extension: _____
Address: **360 SW Avery Avenue** City: **Corvallis**
Zip Code + 4: **97333-** Email Address: **greg.j.verret@co.benton.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**RECORDING COVER SHEET
OTHER THAN FOR LIENS OR
CONVEYANCES, PER ORS 205.234**

*THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON
PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING.
ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE
TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.*

AFTER RECORDING RETURN TO
Lois Jean Bousquet
Board of Commissioners Office

BENTON COUNTY, OREGON **2006-408517**
MI-MISCR
Cnt#1 Str#5 **08/09/2006 10:41:16 AM**
\$0.00



I, James V. Morales, County Clerk for Benton
County, Oregon, certify that the instrument
identified herein was recorded in the Clerk
records.

James V. Morales - County Clerk



1. **NAME(S) OF THE TRANSACTION(S)**, described in the attached instrument and required by ORS 205.234(a).

Note: Transaction as defined by ORS 205.010 "means any action required or permitted by state law or rule or federal law or regulation to be recorded including, but not limited to, any transfer, encumbrance or release affecting title to or an interest in real property."

Amendments to the Benton County Development Code, Chapters 51,
53, 55, 60, 85, 94, and 99. Ordinance No. 2006-0214

2. **DIRECT PARTY**, name(s) of the person(s) described in ORS 205.125(1)(b) or
GRANTOR, as described in ORS 205.160.

BENTON COUNTY

3. **INDIRECT PARTY**, name(s) of the person(s) described in ORS 205.125(1)(a) or
GRANTEE, as described in ORS 205.160.

BENTON COUNTY

DEPT OF

AUG 11 2006

LAND CONSERVATION
AND DEVELOPMENT

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY
STATE OF OREGON**

In the Matter of Amending the Benton County Development Code Chapters 51, 53, 55, 60, 85, 94, and 99.)))))	ORDINANCE No. 2006-0214
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WHEREAS, the Board of County Commissioners directed staff to prepare amendments for public hearing on these matters; and

WHEREAS, the proposed amendments consist primarily of three main types – updates to comply with recent changes to state statute; improvements to procedures to implement policies; and re-wording and re-organizing to improve clarity; and

WHEREAS, the Benton County Planning Commission held a duly advertised public hearing on February 7 and March 7, 2006, and voted to recommend that the Board of Commissioners adopt the proposed amendments; and

WHEREAS, the Benton County Board of Commissioners held a duly advertised public hearing on April 4, May 2, May 16, and June 13, 2006, to consider the proposed amendments; and

WHEREAS, the Board of County Commissioners finds that the proposed amendments comply with the criteria of Benton County Code 53.505 through 53.625, and are consistent with applicable state statutes and administrative rules and the applicable policies of the Benton County Comprehensive Plan; and

WHEREAS, the Benton County Board of Commissioners has considered the staff report, the application materials, the testimony of witnesses, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated and approved the proposed amendments to the Benton County Development Code, and conducted the First Reading of Ordinance 2006-0214 on July 18, 2006; and

WHEREAS, the Benton County Board of Commissioners held the Second Reading of the proposed Ordinance on _____, 2006.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY ORDAINS AS FOLLOWS:

PART I: Short Title. Amendments to the Benton County Development Code.

PART II: Authority. The Board of County Commissioners of Benton County has authority to amend the Development Code pursuant to ORS Chapter 215 and the Benton County Charter.

PART III. The Benton County Development Code is hereby amended as shown in the attached “Exhibit 1”, based on the Findings and Conclusions contained in the attached “Exhibit 2” and hereby adopted and incorporated herein.

PART IV. The effective date for these amendments to the Benton County Comprehensive Plan Map and Zoning Map will be:

First Reading: July 25, 2006
Second Reading: August 8, 2006
Effective Date: September 7, 2006

BENTON COUNTY BOARD OF COMMISSIONERS

Kenyon

Chair

Christy Jarama

Commissioner

Michael MacQueen

Commissioner

Approved as to Form:

Vanessa Long 7-3-06

County Counsel

L. J. Bourque

Recording Secretary

Exhibit 1
Amendments to
Benton County Development Code

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]

51.10 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]

51.011 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 use or structure" means a use or structure which is incidental and subordinate to the principal use or structure.
- (3) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. The "base flood" also means "100 year flood".
- (4) "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.
- (5) "Big game" means deer and elk.
- (6) "Cemetery" means a place used for the permanent interment of human remains.
- (7) "Day care center" means an establishment providing specialized group care for thirteen or more children.
- (8) "Driveway" means access to private land.
- (9) "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.

~~(9)(9)~~ "Dwelling" means a single-family dwelling. "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.

~~(11)(11)~~ "Dwelling, multi-family" means a building used by two or more families living independently of each other in separate dwelling units.

~~(11)(12)~~ "Family" means an individual, two or more related persons, or a group of not more than five unrelated persons living together as a housekeeping unit.

~~(12)(13)~~ "Farm use" means one of 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. "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.

(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(1)(e). Farm use shall be appropriate for the continuation of existing, or the promotion of new, commercial agriculture enterprise in the area.

"Farm use" in nonresource zones is distinguished from the definition applying to resources zones 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"; and

(C) "on-site construction and maintenance of equipment and facilities" used for farm use
[Ord. 2001-0174]

(c) 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. "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 species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife 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 (1)(e) or 321.415 (5).

As used in the definition of "farm use",

(A) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, composting or packaging of the products or by-products; and

(B) "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]

(13)(14) "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.

(14)(15) "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.

(15)(16) "Flag lot" means a parcel or lot connected by means of a narrow strip of land to a road right-of-way.

(16)(17) "Flood hazard" means a risk to life or property caused by flooding.

(17)(18) "Flood plain" means a land area capable of being inundated by water during a base flood.

(18)(19) "Flood proofing" means any combination of structural and non-structural additions or adjustments to properties and structures for the reduction or elimination of flood damage.

(19)(20) "Floodway" means that portion of the flood plain reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

~~(20)~~(21) "Floodway fringe" means that portion of the flood plain of a river or other watercourse that lies landward of the floodway and serves as a temporary floodwater storage area during the base flood.

~~(21)~~(22) "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.

~~(22)~~(23) "Frontage" means the boundary of a parcel or lot abutting a road.

~~(23)~~(24) "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.

~~(24)~~(25) "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.

~~(25)~~(26) "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.

~~(26)~~(27) "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.

~~(27)~~(28) "Land division" means a subdivision or land partition where a new lot or parcel is created.

~~(28)~~(29) "Landfill" means land used for the disposal of solid wastes, and may include the removal and classification of recycled materials.

~~(29)~~(30) "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.

~~(30)~~(31) "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.

~~(31)~~(32) "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.

~~(32)~~(33) "Major stream" means that stretch of a creek designated as a flood hazard area on the Flood Insurance Rate Maps.

(34) "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.

~~(33)~~(35) "Minor stream" means that stretch of a creek which is not designated as a flood hazard area on the Flood Insurance Rate Maps.

~~(34)~~(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.

~~(35)~~(37) "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.

~~(36)~~(38) "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.

~~(37)~~(39) "Nonfarm use" means any use which is not a "farm use" as defined by this code.

~~(38)~~(40) "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.

~~(39)~~(41) "Ordinary high water line" means the top of the bank of a stream or river.

~~(40)~~(42) "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.

~~(41)~~(43) "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(31).

- (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, 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) 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]

~~(42)"Parent parcel" means a parcel or lot as described and recorded in County Deed Records on or before September 20, 1978.~~

~~(43)~~(44) "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.

~~(44)~~(45) "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.

~~(45)~~(46) "Planning Official" means the Director of the Development Department or the Director's designee.

~~(46)~~(47) "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.

~~(47)~~(48) "Property line adjustment" means the relocation of a common boundary where an additional unit of land is not created.

~~(48)~~(49) "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 Resources. 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 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.

~~(49)~~(50) "Quasi-judicial land use action" is land use decision made pursuant to existing criteria regarding specifically identified persons or properties.

~~(50)~~(51) "Recreational vehicle" means a vacation trailer or other unit which is designed for human occupancy.

~~(51)~~(52) "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.

~~(52)~~(53) "Residential home" means a home licensed by or under the authority of the Oregon Department of Human Resources 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.

~~(53)~~(54) "Residential facility" means a facility licensed by or under the authority of the Oregon Department of Human Resources 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.

~~(54)~~(55) "Resource zone" means the Exclusive Farm Use, ~~Exclusive Farm Use Homestead Agriculture~~, Multi-Purpose Agriculture, Flood Plain Agriculture, Forest Conservation, and Open Space Zones.

~~(55)~~(56) "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.

~~(56)~~(57) "Right-of-way" means the area between the boundary lines of a road.

~~(57)~~(58) "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.

~~(58)~~(59) "Roadway" means the road surface improved for use by vehicular traffic.

~~(59)~~(60) "Sanitary landfill" means land used for the disposal of solid wastes in accordance with State and County requirements.

~~(60)~~(61) "School:—" 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.

~~(61)~~(62) "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.

~~(62)~~(63) "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.

~~(63)~~(64) "Secondary road" means a road which is not required to meet County urban or rural road standards.

~~(64)~~(65) "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.

~~(65)~~(66) "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.

~~(66)~~(67) "Structural alterations" means a change in the supporting members of a structure, such as bearing walls, columns, beams, girders, or foundations.

~~(67)~~(68) "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.

~~(68)~~(69) "Subdivide land" means to divide land into four or more lots within a calendar year.

~~(69)~~(70) "Subdivision" means either the act of subdividing land or a tract of land subdivided.

~~(70)~~(71) "Surface mining" means the extraction or processing of mineral or aggregate resources.

~~(71)~~(72) "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]

~~(72)~~(73) "Urban fringe" means that area between an urban growth boundary and the city limits of an incorporated city.

~~(73)~~(74) "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.

~~(74)~~(75) "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.

~~(75)~~(76) "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.

~~(76)~~(77) "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]

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) Flood Plain Agriculture (FPA)
- (4) Forest Conservation (FC)
- (5) Open Space (OS)
- (6) Rural Residential (RR)
- (7) Urban Residential (UR)

- (8) Commercial (C)
- (9) Industrial (I)
- (10) Agricultural Industrial (AI)
- (11) Landfill Site (LS)
- (12) Public (P)
- (13) Rural Service Center (RSC)
- (14) Philomath Low-Density Residential (PR-1)
- (15) Philomath Medium-Density Residential (PR-2)
- (16) Philomath High-Density Residential (PR-3)
- (17) Philomath General Commercial (PC-2)
- (18) Philomath Light Industrial (PLI)
- (19) Philomath Heavy Industrial (PHI) [Ord 90-0069]

~~**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) Flood Plain Management (/FPM)~~
- ~~(2) Greenway Management (/GM)~~
- ~~(3) Flexible Industrial (/FI)~~
- ~~(4) Airport (/A)~~
- ~~(5) Goal 5 Resources~~
 - ~~—— (a) Wetland (/W)~~
 - ~~—— (b) Surface Mining (/SM)~~
 - ~~—— (c) Sensitive Fish and Wildlife Habitat (/FW)~~
- ~~(6) Use (/U) [Ord 97-0131]~~

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) Flood Plain Management (/FPM) 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 and Floodway 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)

(6) Use (/U)

(7) Natural Features Overlays

(a) Natural Hazards

(b) Natural Resource

* * *

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.

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:

- (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. (1) 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.

(2) 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 reasonable period of time at the request of the applicant. The time period does not apply to an appeal of a decision of the Board of Commissioners, or to a text amendment.

(2) The Planning Official shall determine whether an application is complete within thirty (30) days from the date of the filing of an application. If the Planning Official informs the applicant that the application is incomplete, the applicant has 14 days to submit written notice that he or she will be completing the application. The applicant then has 180 days to complete the application. If the applicant fails to respond within 14 days of the Planning Official's notification that the application is incomplete, such action shall be considered refusal to complete the application and the application shall be deemed complete for the purposes of BCC 51.535(1) on the 31st day after the application was filed with the County. If, at any time after the 14-day period following notification that the application is incomplete, the applicant refuses to complete the application, then the application shall be deemed complete for the purposes of BCC 51.535(1) on the date the applicant submits such refusal to the County. [Ord 26, Ord 90-0069, Ord 98-0134, Ord 2000-0157]

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NOTICE REQUIREMENTS

Justification: The modifications to the following notification sections are intended to make the general notification requirements more logical and reflective of departmental policy; update the timelines for submittal of an application, preparation of the staff report and issuance of a decision. The notification requirements call for notifying neighboring property owners of several types of decision that are technically not appealable, and refer to outdated types of applications. The proposed amendments will reduce unnecessary mailings, and will provide improved clarity. The procedural amendments relating to timelines will enable more efficient functioning of the Community Development staff, and increase clarity to citizens about their involvement in land use proceedings.

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) Creation of a parcel smaller than the minimum parcel size in the Forest Conservation, Exclusive Farm Use, or Multi-Purpose Agriculture Zone through partition or property line adjustment.
- (h) Discretionary property line adjustment in the Exclusive Farm Use Zone.
- (i) Non-farm dwelling or lot-of-record dwelling in the Exclusive Farm Use zone.
- (j) Dwelling in a Forest Conservation zone, except a replacement dwelling or a dwelling on 160 acres or 200 noncontiguous acres..
- (k) Historic resource – alteration or demolition (resource on the Benton County Register of Historic Resources).
- (l) Historic resource – placement or removal from the Benton County Register of Historic Resources.
- (m) Planned unit development.
- (n) Subdivision.
- (o) Zoning Map amendment.
- (p) Comprehensive Plan Map amendment.
- (q) Any other discretionary approval of a proposed development of land under the Benton County Comprehensive Plan or Development Code.

- ~~(a) Alteration of a nonconforming use.~~
- ~~(b) Alteration or demolition of a historic resource on the Benton County Register of Historic Resources.~~
- ~~(c) Appeal of a decision of the Planning Official or Planning Commission.~~
- ~~(d) Comprehensive Plan Map amendment.~~
- ~~(e) Conditional use.~~
- ~~(f) Creation of a farm or nonfarm parcel or lot.~~
- ~~(g) Creation of a parcel or lot smaller than the minimum parcel or lot size in the Forest Conservation Zone through partition or property line adjustment.~~
- ~~(h) Dwelling in a Forest Conservation zone, except a replacement dwelling Farm related dwelling.~~
- ~~(i) Non-farm dwelling or lot of record dwelling in the Exclusive Farm use zone.~~
- ~~(j) Property line adjustment in the Exclusive Farm Use Zone.~~
- ~~(k) Property line adjustment which results in a property smaller than the minimum parcel or lot size in the Forest Conservation Zone.~~
- ~~(l) Placement or removal of a historic resource on the Benton County Register of Historic Resources.~~
- ~~(m) Planned unit development.~~
- ~~(n) Resource related dwelling on parcels or lots smaller than the minimum parcel or lot size in the Forest Conservation Zone.~~
- ~~(o) Secondary farm related dwelling.~~
- ~~(p) Subdivision.~~
- ~~(q) Variance.~~
- ~~(r) Vested right determination.~~
- ~~(s) Zoning Map amendment.~~
- ~~(t) 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~~25~~ 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:

- (a) Administrative review pursuant to BCC 53.160; and
- (b) Property line adjustment involving discretionary review pursuant to _____;
- (c) Planning Official's Interpretation.

[Ord 90-0069, Ord 92-0092, Ord 93-0096, Ord 96-0118]

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.

For additional information concerning [Ordinance Number or File Number], you may call the Benton County Community Development Department at [phone number].

(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 that will affect the permissible uses of your land.

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 will affect the permissible uses of your property and may reduce 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] 360 SW Avery Avenue, Corvallis, Oregon. A copy of [Ordinance Number or File Number] also is available for purchase for the cost of copying at a cost of _____.

For additional information concerning [Ordinance Number or File Number], you may call the Benton County Community Development Department at [phone number]. _____.

~~(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:~~

(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.

51.610 Public Notice Requirements for Quasi-Judicial Land Use Actions. (1) The Planning Official shall mail notice of a proposed quasi-judicial land use action for which BCC 51.605(1) requires public notice at least ten days prior to the date of decision or public hearing. 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.

(4) Notice shall be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(5) Notice shall be provided to the Oregon Department of Transportation (ODOT) when the proposed land use action could affect an ODOT facility (including roads).

~~(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]

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 ~~reasonable~~ 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 ~~reasonable~~ 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 prior to the final decision or prior to or at the public hearing. 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]

51.618 Public Notice Requirements for Legislative Land Use Actions. (1) Notice of all legislative land use actions shall be provided to the Oregon Department of Land Conservation and Development forty-five days prior to the initial public hearing, pursuant to ORS 197.610. Additionally, for a legislative land use action proposing to limit or prohibit a use currently allowed on a property, the notice requirements of BCC 51.608 shall apply. For all other legislative land use actions, the provisions of subsections (2) through (6) below shall apply.

~~(1) The~~(2) 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.

~~(2) The~~ 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 ~~two~~four years.

~~(3) The~~ 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~~Development Department~~ 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~~in response to a quasi-judicial land use action or as direct correspondence to the Planning Official.~~

(5) Notice shall be provided to the Oregon Department of Transportation (ODOT) when the proposed land use action could affect an ODOT facility.

~~(6) 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]~~

51.620 Form of Notice of Proposed Legislative Land Use Actions. 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 reasonable 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]

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 ~~to~~ 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 ~~under BCC 51.630(2)(e) herein~~. 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]

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 for which BCC 51.605(1) requires public notice was made by the Planning Official without a public hearing, (The Planning Official shall, in addition to providing notice pursuant to BCC 51.625(1), publish notice of the decision in a newspaper of general circulation in Benton County.~~

(2) If the decision was made following a public hearing pursuant to BCC 51.705 to 51.725, the notice of decision need ~~only 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 reasonable-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]

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 reasonable-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]

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 ~~ten~~ 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]

51.715 Exhibits and Evidence for Hearings on Legislative Land Use Actions. (1) The proposed ordinance shall be drafted ~~at least ten days prior to the date of the hearing and be~~ made available to the public at the time notice pursuant to BCC 51.618 ~~or 51.607~~ 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]

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]

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]

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 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]

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 ~~appeared before the Planning Commission regarding the decision either orally or in writing.~~

(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]

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]

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]

Chapter 53
General Review Criteria and Procedures

* * *

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.

53.315 Alteration of a Nonconforming Use. (1) ~~Alteration or change of a nonconforming use may be permitted if the alteration or change reasonably continues the use and 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 Commission Official. The Planning Commission 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]

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~~Building. ~~Alteration of a nonconforming structurebuilding shall not increase the degree of nonconformity of the existing buildingstructure. A structure with a nonconforming setback may be increased in size provided the existing nonconforming setback is not further reduced. A structure with nonconforming setbacks may be rebuilt in the same location within one year of destruction.~~ [Ord 90-0069]

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 ~~one~~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. [Ord 26, Ord 90-0069]

(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.

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(6) 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.

* * *

Chapter 55

Exclusive Farm Use Zone (EFU)

55.005 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, Hullt, 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 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, Brennar and Chitwood;
- (C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and
- (D) Subclassification IVw, specifically, Coquille.

[Ord 94-0108; 2000-0157]

(3) For purposes of approving a land use application under the lot-of-record provisions of BCC 55.230, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner:

- (a) Submits a statement of agreement from the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture that the soil class, soil rating or other soil designation should be adjusted based on new information; or
- (b) (A) Submits a report from a soils scientist whose credentials are acceptable to the State Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and
- (B) Submits a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subparagraph (A) of this paragraph and finds the analysis in the report to be soundly and scientifically based.

[Ord 2000-0157; 2001-0174]

(4) For the purposes of review of a land use application under Benton County Code Sections 55.230, soil classes, ratings or other soil designations used in or made pursuant to this section are those of the NRCS in its most recent publication for that class, rating or designation before November 4, 1993 except for changes made pursuant to subsection (34) of this section.

(5) For the purposes of determining whether a tract is "High-value farmland" during review of a land use application under Benton County Code Sections 55.105, 55.106, 55.107, 55.108, 55.109, 55.110, 55.111, 55.112, 55.115, 55.205, 55.210, 55.220, and 55.328, soil classes, ratings or other soil designations used in or made pursuant to this section are those of the NRCS in its most recent publication for that class, rating or designation.

(6) For purposes of determining soil capability other than those described in subsections (34) through (56) of this section, 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 2000-0157; 2001-0174]

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.

55.050 Notice of Pending Action. Notice of all 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]

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.

(2) A land use decision approving a dwelling pursuant to BCC 55.106(6) (replacement dwelling), 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. An extension may be granted for two additional years. "Development action" typically means the property owner has submitted a complete application for a building permit or manufactured dwelling placement permit for the dwelling.

[Ord 94-0108]

55.085 Extension of the Approval Period for Discretionary Decisions. 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 them from initiating or continuing development within the approval period. 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, in order to approve the extension. 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; 2001-0174]

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

- (1) Farm use.
- (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, restoration, or enhancement of wetlands.

(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) The breeding, kenneling and training of greyhounds for racing. This use is not allowed on high-value farmland.

(11) Fire service facilities providing rural fire protection services.

(12) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(13) 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.

(14) 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.

(15) 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.

(16) Public or private schools, including all buildings essential to the operation of a school. This use shall not be approved on High-Value Farmland. This use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirement of law.

~~(17) Churches and cemeteries in conjunction with churches. This use shall not be approved on High-Value Farmland, nor within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirement of law.~~

(18) Implementation of a wildlife habitat conservation and management plan approved by the Oregon Department of Fish and Wildlife pursuant to ORS 215.802.

(19) 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).

(20) 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:

(A) (i) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(ii) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(B) Adversely affected the complainant.

(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]

55.106 Uses permitted in the Exclusive Farm Use Zone subject to review by the Planning Official pursuant to BCC 53.160. Uses in this section are permitted, provided the standards listed below are met.

(1) Wineries.

(a) A winery authorized under this section is a facility that produces wine with a maximum annual production of:

(A) Less than 50,000 gallons and that:

(i) Owns an on-site vineyard of at least 15 acres;

(ii) Owns a contiguous vineyard of at least 15 acres;

(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 that:

(i) Owns an on-site vineyard of at least 40 acres;

(ii) Owns a contiguous vineyard of at least 40 acres;

(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; or

(iv) Obtains grapes from any combination of subparagraph (i), (ii) or (iii) of this paragraph.

~~The applicant shall show that vineyards have been planted, and/or that a contract has been executed, to obtain grapes from a vineyard of at least fifteen (15) acres, whether in the applicant's ownership or otherwise.~~

~~(B) At least 50,000 gallons and no more than 100,000 gallons. The applicant shall show that vineyards have been planted, and/or that a contract has been executed, to obtain grapes from a vineyard of at least forty (40) acres, whether in the applicant's ownership or otherwise.~~

(b) A winery shall allow only the sale of wines produced in conjunction with the winery and items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant as defined in ORS 624.010.

(c) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards, described in subsection (1)(a)(A) and (B) of this section, have been planted or that the contract has been executed, as applicable.

(d) The Planning Official shall adopt findings for each of the standards described in paragraphs (A) and (B) of this subsection. 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, not to exceed 100 feet, from all property lines for the winery and all public gathering places; and

(B) Provision of direct road access, internal circulation and parking.

(e) The Planning Official shall also apply local criteria regarding flood plains, geologic hazards, the Willamette River Greenway, solar access, airport safety or other regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

[Ord 90-0069; 2001-0174]

(2) Farm Stand. A farm stand may be approved if:

(a) 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

(b) 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.

(c) 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,

syrops, 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.

(d) As used in this section, "local agricultural area" includes Oregon.

~~(a) A farm stand is structures designed and used for sale of farm crops and livestock grown on farms in the local agricultural area, including the sale of retail incidental items, if the sales of the incidental items make up no more than 25 percent of the total sales of the farm stand; and~~

~~(b) A farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment. [Ord 94-0108; 2001-0174]~~

~~(3) Seasonal Farmworker Housing, as defined in BCC 51.020 and subject to the standards of (a) through (l) below. In the alternative to meeting the standards below, an applicant for Seasonal Farmworker Housing may apply for Conditional Use review pursuant to BCC 55.210(9). Temporary housing to be used no more than 30 days in a calendar year is exempt from the requirements of this section, provided no more than 20 people are accommodated, the temporary housing is located at least 300 feet from another dwelling on a different ownership, and the housing structure(s) are removed or disassembled when the 30-day use period concludes.~~

~~(a) The housing will be located on soils that are not high-value soils as defined in BCC 55.015(2)(a) through (d);~~

~~(b) The facility shall be located on a tract of at least 10 acres.~~

~~(c) The number of persons accommodated shall be limited to not more than 2 persons per acre of land in the subject tract, up to a total of no more than 40 people.~~

~~(d) To demonstrate the need for seasonal farmworker housing, there shall be crops planted on the contiguous ownership where the housing is located, or on other owned or leased lands that are part of the farm, that require the number of seasonal farm workers proposed to be accommodated; or, written evidence of a contract with a buyer for annual crops to be raised on the subject farm that require the number of seasonal farm workers proposed to be accommodated.~~

~~(e) The seasonal farm workers occupying the temporary farm housing shall be employed on the subject contiguous ownership and other owned or leased lands that are part of the farm at least 50% of the time worked.~~

~~(f) The farm owner or someone responsible for the management of the housing and employed by the farm owner shall live in the seasonal farm housing or in a dwelling located on the subject contiguous owned and leased land within 660 feet of the temporary farm housing.~~

~~(g) Weekly franchised solid waste collection shall be provided when the temporary farm housing is occupied.~~

~~(h) If a state agency is authorized to issue licenses for seasonal farm housing, evidence that a license has been issued for the temporary farm housing shall be provided prior to the first occupancy each year.~~

~~(i) The housing facility shall be completely vacant for at least 93 consecutive days per 12 months.~~

~~(j) The housing facility shall be located at least 100 feet from property lines and at least 660 feet from a dwelling located on a different ownership.~~

~~(k) Residential structures, manufactured dwellings or recreational vehicles used as seasonal farmworker housing shall obtain required building/placement permits and shall comply with all applicable provisions of the Benton County Development Code and applicable building code.~~

~~(l) On-site sanitation and water facilities shall be provided and shall meet the requirements of the Benton County Health Department.~~

~~[Ord 2000-0163]~~

(4) 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]

(5) Utility facilities necessary for public service, including 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.

(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 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:

(A) Technical and engineering feasibility;

(B) 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;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights-of-way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (a) 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.

(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 section 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) In addition to the provisions of subsections (a) to (d) of this rule, 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.

(f) 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.

[Ord 2001-0174]

(6) ~~(a) Replacement~~ Maintenance, repair or replacement of existing legally established dwellings, subject to the following provisions.

(a) To be eligible for replacement, an existing dwelling shall have:

(A) been legally established;

(B) intact exterior walls and roof structure;

~~(CB)~~ indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

~~(DC)~~ interior wiring for interior lights;

~~(ED)~~ a heating system;

(b) Replacement must occur within one year of removal or destruction of the structure, and shall be through one of the following procedures:

(A) Application for a building permit or placement permit for the new dwelling, accompanied by documentation demonstrating that the existing dwelling meets criteria of subsection (a) of this section. In the case of replacement, the dwelling to be replaced shall be removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling.

(B) Application for a deferred replacement permit, pursuant to the procedures for Administrative Review in BCC 53.160. Within three months of the approval of the deferred replacement permit, the existing dwelling shall be removed or demolished; if the existing dwelling is not removed or demolished within three months, the permit becomes void. An approved deferred placement permit allows construction of the replacement dwelling at any time; however, the replacement dwelling must comply with all building, plumbing and sanitation codes and other requirements relating to health and safety, and siting standards, applicable at the time of construction. The deferred replacement permit ensures the new dwelling will be approved for zoning purposes; however, the property owner must still obtain all required permits for building or placement of the new dwelling. The deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the Planning Official or the Planning Official's designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The Planning Official or the Planning Official's designee shall maintain a record of the lots and parcels that do not qualify for

the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section;

~~(de)~~ An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may ~~only~~ be replaced only by a manufactured dwelling.

~~(ed)~~ The landowner shall sign a covenant as required by BCC 55.405(6).

[Ord 94-0108; 2001-0174]

(7) A facility for the processing of farm crops. The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. 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]

(8) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. 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]

(9) 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]

(10) 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:

(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, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251.

(11) Churches or other nonresidential places of worship, and cemeteries in conjunction with such places of worship. This use shall not be approved on High-Value Farmland, nor within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirement of law.

(a) A place of worship allowed pursuant to this subject 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.

(b) 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.

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.

55.108 Uses not permitted on High-Value farmland. (1) The following uses are not permitted to be established on high-value farmland:

- (a) Commercial Dog Kennels
- (b) Destination Resorts.
- (c) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
- (d) Public or private schools, including all buildings essential to the operation of a school.
- (e) Churches and cemeteries in conjunction with churches.
- (f) Private parks, playgrounds, hunting and fishing preserves and campgrounds.
- (g) Golf courses.
- (h) The breeding, kenneling and training of greyhounds for racing.
- (i) Composting facilities for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-96-020.

[Ord 2001-0174]

(2) Existing facilities of the uses in BCC 55.108(a)-(ji) may be maintained, enhanced or expanded on the same tract, subject to BCC 53.215, BCC 53.220, and BCC 55.215. An existing golf course may be expanded consistent with the requirements of BCC 55.215 and BCC 55.210(2), but shall not be expanded to contain more than 36 total holes. [Ord 94-0108; 2001-0174]

FARM-RELATED DWELLINGS

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

(1) On land identified as high-value farmland, a dwelling considered customarily provided in conjunction with farm use may be allowed subject to review by the Planning Official, pursuant to BCC 53.160, for compliance with the following criteria:

- (a) The subject tract is currently employed for the farm use, that produced at least \$80,000 (~~1994 dollars~~) in gross annual income from the sale of farm products in the last two years or 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; and

(b) 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 operationthe subject tract; and

(c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in BCC 55.109(1)(a).

(d) In determining the gross income required by BCC 55.109(1)(a);

(A) only gGross income only from land zoned EFU and/or MPA, and owned by the farm or ranch operation, not leased or rented, shall be counted; and

(B) tThe cost of purchased livestock shall be deducted from the total gross income; and

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

(e) The subject parcel or lot is legally established. [Ord 94-0108]

(f) The landowner shall sign a covenant as required by BCC 55.405(6).

(2) As used in this section, "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;

(3) If a farm or ranch operation does not qualify under the criteria of this section, BCC 55.114 provides an alternative ownership history option.

[Ord 2001-0174]

FARM-RELATED DWELLINGS ON LAND NOT IDENTIFIED AS HIGH VALUE

55.110 Farm Related Dwelling on a Parcel or Lot Over 160 Acres or More of Non-High-Value Farmland. (1) One farm related dwelling may be permitted on a legally established parcel or lot in the Exclusive Farm Use Zone on land not identified as high value, subject to 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 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).
[Ord 2001-0174]

~~**55.111 Farm Related Dwelling on a Parcel or Lot Between 10 and 160 Acres.** If the County prepares the potential gross sales figures pursuant to BCC 55.111(3) and subject to review by the Department of Land Conservation and Development, then one farm related dwelling may be permitted on a legally established parcel or lot of non-High Value farm land, subject to review by the Planning Official.~~

~~(1) To identify the commercial farm or ranch tracts to be used to determine BCC 55.111(2), the gross sales capability of each tract in the study area including the subject tract must be determined, using the gross sales figures prepared by Benton County according to section (3) below, as follows:~~

~~(a) Identify the study area. This includes all the land in the tracts wholly or partially within one mile of the perimeter of the subject tract;~~

~~(b) Determine for each tract in the study area the number of acres in every land classification from the county assessor's data;~~

~~(c) Determine the potential earning capability for each tract by multiplying the number of acres in each land class by the gross sales per acre for each land class provided by the Land Development and Conservation Commission. Add these to obtain the potential earning capability for each tract.~~

~~(d) Identify those tracts capable of grossing at least \$10,000 dollars based on the data generated in BCC 55.111(1)(e);~~

~~(e) Determine the median size and median gross sales capability for those tracts capable of generating at least \$10,000 dollars in annual gross sales to use in BCC 55.111(2)(a) and (b).~~

~~(2) On land not identified as high value farmland pursuant to BCC 55.015(2), a dwelling may be considered customarily provided in conjunction with farm use if:~~

~~(a) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract; and~~

~~(b) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in BCC 55.111(2)(a); and~~

~~(c) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in BCC 55.111(2)(b); and~~

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

~~(e) Except as provided for seasonal farm worker housing, there is no other dwelling on the subject tract; and~~

~~(f) If the proposed dwelling is based on a farm use which has not been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by BCC 55.111(2)(e).~~

~~(g) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.~~

~~(3) In order to review a farm dwelling pursuant to section (2), the county may prepare, subject to review by the Department of Land Conservation and Development (DLCD), a table of the estimated potential gross sales per acre for each assessor land class (irrigated and nonirrigated) required in section (1). DLCD shall provide assistance and guidance to the county in the preparation of this table. The table shall be prepared as follows:~~

~~(a) Determine up to three indicator crop types with the highest harvested acreage for irrigated and for nonirrigated lands in the county using the most recent OSU Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and State Agricultural Estimates", or other USDA/Extension Service documentation;~~

~~(b) Determine the combined weighted average of the gross sales per acre for the three indicator crop types for irrigated and for nonirrigated lands, as follows:~~

~~(A) Determine the gross sales per acre for each indicator crop type for the previous five years (i.e., divide each crop type's gross annual sales by the harvested acres for each crop type);~~

~~(B) Determine the average gross sales per acre for each crop type for three years, discarding the highest and lowest sales per acre amounts during the five year period;~~

~~(C) Determine the percentage each indicator crop's harvested acreage is of the total combined harvested acres for the three indicator crop types;~~

~~(D) Multiply the combined sales per acre for each crop type identified under paragraph (B) of this subsection by its percentage of harvested acres to determine a weighted sales per acre amount for each indicator crop;~~

~~(E) Add the weighted sales per acre amounts for each indicator crop type identified in paragraph (D) of this subsection. The result provides the combined weighted gross sales per acre.~~

~~(c) Determine the average land rent value for irrigated and nonirrigated land classes in the county's exclusive farm use zones according to the annual "income approach" report prepared by the county assessor pursuant to ORS 308.345;~~

~~(d) Determine the percentage of the average land rent value for each specific land rent for each land classification determined in subsection (c) of this section. Adjust the combined weighted sales per acre amount identified in paragraph (b)(E) of this section using the percentage of average land rent (i.e., multiply the weighted average determined in paragraph (4)(b)(E) of this rule by the percent of average land rent value from subsection (4)(c) of this rule). The result provides the estimated potential gross sales per acre for each assessor land class that will be provided to each county to be used as explained under subsection (3)(c) of this rule.~~

~~-[Ord 94-0108; 2001-0174]~~

55.111 Commercial Dairy Farm Dwelling.

(1) A dwelling may be allowed in conjunction with a commercial dairy farm, as defined by subsection (2) of this section, if:

(a) The subject tract will be employed as a commercial dairy as defined by subsection (2) of this section; and

(b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and

(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 will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm; and

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

(f) The Oregon Department of Agriculture has approved the following:

(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.

(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(2)(a) or 55.112(1)(a), whichever is applicable, from the sale of fluid milk.

55.112 Farm Related Dwelling on Non-High-Value Farmland (\$40,000 Gross Annual Income Test). One farm related dwelling is permitted on a legally established parcel or lot of non-High Value farmland, subject to review by the Planning Official pursuant to BCC 53.160. Note there is an alternative ownership history option available under BCC 55.114.

(1) On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, that produced in the last two years or three of the last five years the lower of the following:

(A) At least \$40,000 (~~1994 dollars~~) in gross annual income from the sale of farm products; 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) 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~~the subject tract~~; and

(c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in BCC 55.112(1)(a).

(d) 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) and ~~the~~ cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation~~tract~~;

(C) Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
[Ord 94-0108]

(e) The landowner shall sign a covenant as required by BCC 55.405(6).

(2) As used in this section, "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.

[Ord 2001-0174]

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 or 55.112 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 which 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.

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 farm or ranch operation that earned the gross farm income in the last five years or four of the last seven years as required by BCC 55.109(2)(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 the last two years or three of the last five years the gross farm income required by BCC 55.109(2)(a) or 55.112(1)(a), whichever is applicable; and

(B) At least the size of the applicable minimum lot size; and

(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.

ACCESSORY FARM DWELLINGS

55.115 Accessory Farm-Related Dwellings for Year-Round and Seasonal Farmworkers. Accessory farm related dwellings are permitted in the Exclusive Farm Use Zone subject to review by the Planning Official pursuant to BCC 53.160.

(1) An accessory farm dwelling is permitted on a legally established parcel or lot 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 assistance in the management of the farm use is or will be required by the primary farm operator;

(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 ~~principal~~ 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 ~~principal~~ primary farm dwelling is not located, when the accessory farm dwelling is limited to a manufactured dwelling with ~~and~~ a deed restriction is filed with the county clerk. 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. ~~An accessory farm dwelling approved pursuant to this rule may not be occupied by a person or persons who will not be principally engaged in the farm use of the land and whose assistance in the management of the farm use is not or will not be required by the farm operator.~~ The manufactured dwelling may remain if it is reapproved under these rules; or

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

(E) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in BCC 55.109(2)(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 subject farm or ranch that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an the requested-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 ~~principal~~ primary farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, that produced in the last two years or three of the last five years the lower of the following:

(i) At least \$40,000 ~~(1994 dollars)~~ in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

(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 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 ~~principal~~ primary farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, that produced at least \$80,000 ~~(1994 dollars)~~ in gross annual income from the sale of farm products in the last two years or 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).

(2) An accessory farm dwelling approved pursuant to subsection (1) of this section shall be sited in compliance with the following criteria. These siting criteria shall not be applied in such a way as to prevent an otherwise-approved accessory farm dwelling from being sited on the property.

(a) The Planning Official shall approve a dwelling site that, to the greatest extent practicable, minimizes impacts to the following (in order of decreasing priority):

(A) Resource uses on the subject property and neighboring properties;

(B) Other legally established uses on the subject property and neighboring properties.

(b) The approved dwelling site shall comply with the building setbacks required by BCC 55.405

(c) In the event that the approved site does not, in the Planning Official's determination, adequately minimize impacts to uses on neighboring properties, the Planning Official shall impose reasonable and appropriate mitigating conditions of approval including but not limited to:

(A) Fencing, screening and landscape separations;

(B) Height of the dwelling.

(3) 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. [Ord 26, Ord 90-0069, Ord 94-0108]

(34) 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.

(5) 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 2001-0174]

55.120 Farm-Help Dwelling for a Relative of the Farm Operator. A dwelling may be permitted in the Exclusive Farm Use zone, subject to review by the Planning Official, pursuant to BCC 53.160, for compliance with the following criteria:

(1) The dwelling will be located on property used for farm use;

(2) 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~~grandparent, grandchild, parent, child, brother or sister~~ of the farm operator or the farm operator's spouse, whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator;

(3) 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.

(4) Notwithstanding ORS 92.010 to 92.190 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).

(5) The landowner shall sign a covenant as required by BCC 55.405(6).

[Ord 2001-0174]

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, except as otherwise prohibited by BCC 55.108:

(1) Commercial activity in conjunction with farm use, but not including the processing of farm crops pursuant to BCC 55.106(67). [Ord 2001-0174]

(2) Commercial utility facility for the purpose of generation of power for public use by sale. A power generation facility shall not preclude more than 12 acres of high-value farmland nor more than 20 acres of other land from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR 660, Division 4. [Ord 2001-0174]

(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 Aeronautics Division 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 Aeronautics Division.

(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 kennels, except on High-Value Farmland. [Ord 2001-0174]

(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 State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the State 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]

(9) Construction of additional passing and travel lanes requiring the acquisition of right-of-way, but not resulting in the creation of new land 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 land 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 land parcels or lots.

(12) One manufactured dwelling, recreational vehicle, or temporary 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_55.106(56). 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]

(13) A ~~H~~home occupation, subject to the standards of BCC 91.205 - 91.230 and this section. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons; ~~except that a home occupation located on high-value farmland may employ only residents of the home.~~

[Ord 2001-0174]

(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. Lots shall not be offered for sale in a private family burial ground. Every private family burial ground shall:

(a) Comply with State regulations for burial on private property;

(b) 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;

(c) Be documented by a Notice of 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.

(16) A dwelling in conjunction with a wildlife habitat conservation and management plan authorized by ORS 215.802(1), provided the proposed dwelling:

(a) Will be situated on a lot or parcel existing on November 4, 1993, that qualifies for a farm dwelling under BCC 55.109 through 55.112 or a non-farm dwelling under BCC 55.220; and

(b) Will not be established on a lot or parcel that is predominantly composed of soils rated Class I or II, when not irrigated, or rated Prime or Unique by the Natural Resources Conservation Service or any combination of such soils;

(c) Complies with BCC 55.215; and

(d) Is the only dwelling situated on the affected lot or parcel. [Ord 2001-0174]

(17) 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 (134), 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.

(18) A landscaping 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.

[Ord 2001-0174]

[Ord 26, Ord 90-0069, Ord 90-0075, Ord 94-0108, Ord 99-0146; Ord 2001-0174]

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, except as otherwise prohibited by BCC 55.108:

(1) Extension of a new water line where it is found that the water system is a rural water system. [Ord 90-0069]

(2) Golf courses, except on high-value farmland. For the purposes of this section, a golf course is defined as an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. The course shall be a nine or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes.

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,200 yards, and a par of 32 to 36 strokes.

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses, and driving ranges.

(d) Accessory uses to golf courses shall be limited consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods and services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms, lockers, and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course. Accessory uses to a golf course do not include; sporting facilities unrelated to golfing, such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; housing.

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g. food and beverage service, pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment. [Ord 2001-0174]

(3) Destination Resort which is approved consistent with the requirements of statewide planning Goal 8. This use is not permitted on high-value farmland. [Ord 2001-0174]

(4) Aids to navigation and aviation.

(5) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects. 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. 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.

(6) 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]

(7) Private parks, playgrounds, ~~hunting and fishing preserves,~~ and campgrounds, except on high-value farmland.

(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. [Ord 2001-0174]

(8) ~~Public parks, and playgrounds or community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community.~~ A public park may be established consistent with the provisions of ORS 195.120, and OAR 660-034-0035 ~~and 660-034-0040 (whichever is applicable).~~ [Ord 2001-0174]

(9) 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(20) 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:

(A) (i) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(ii) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(B) Adversely affected the complainant.

(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).

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

(911) 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. [Ord 94-0108]

(120) A mass gathering, defined as a gathering, any part of which is held in open spaces, which involves of more than 3000 people any part of which is held in open spaces and which continues or is can reasonably be expected to continue for more than 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). [Ord 2001-0174]

(13) Composting facilities for which a permit has been granted by the Department of Environmental Quality under ORS 429.245 and OAR 340-96-020. This use is not allowed on high-value farmland. Except for those composting facilities that are a "farm use" as defined in BCC 51.020, the type of operations and facilities allowed are those defined by the Environmental Quality Commission under OAR 340-096-0024(1), (2) or (3). 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. [Ord 2001-0174]

~~(12) Seasonal farmworker housing. As an alternative to meeting the standards of BCC 55.106(3), a property owner may request review of a proposal for seasonal farmworker housing subject to the criteria below. The conditional use criteria of BCC 53.215 and 55.215 shall not apply.~~

~~(a) The applicant shall demonstrate a need for the proposed housing for seasonal farmworkers in the area; and~~

~~(b) The applicant shall show that the demonstrated need cannot be met by available land in rural centers and other land not zoned for farm or forest use; and~~

~~(c) The facility shall meet the standards of BCC 55.106(3)(g) through (i)~~

~~(d) The Planning Commission may impose conditions of approval to mitigate the impact of the facility on surrounding uses and on farm and forest practices, and to ensure safe and adequate facilities, provided such conditions are clear and objective and do not have the effect of discouraging needed housing through unreasonable cost or delay. These conditions may include any of the standards of BCC 55.106(3)(b) through (f). [Ord 2001-0174]~~

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) The standards set forth in subsection (1) of this section shall not apply to farm or forest uses conducted within:

(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.

[Ord 90-0069, Ord 94-0108, Ord 2001-0174]

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 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 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.

- (C) The dwelling is situated on land 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; and
- (D) _The dwelling will be sited on a lot or parcel created before January 1, 1993;
- (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 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)(BE). 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)(BE); and

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

(D) 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.

[Ord 2000-0157; Ord 2001-0174]

(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) or lot-of-record (BCC 55.230) provisions. [Ord 94-0108; 2001-0174]

(5) The property owner shall sign a covenant as required by BCC 55.405(6).
[Ord 2001-0174]

LOT OF RECORD DWELLINGS

55.230 Lot of Record Dwellings.

(1) A Lot of Record Dwelling may be approved 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(6)):

(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 except as provided in BCC 55.230(59) and (610); 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.

(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) or lot-of-record (BCC 55.230) 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) For purposes of BCC 55.230(1) 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.

(7) The county assessor shall be notified that the governing body intends to allow the dwelling. [Ord 94-0108]

(8) 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]

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

(9) Notwithstanding the requirements of BCC 55.230(1)(e), a single-family dwelling may be sited on high-value farmland if:

(a) It meets the other requirements of BCC 55.230 (1) through (4);

(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 State 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]

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

(10) Notwithstanding the requirements of BCC 55.230(1)(e), a single-family dwelling may be sited on high-value farmland if:

- (a) It meets the other requirements of BCC 55.230(1) and (2);
- (b) The tract on which the dwelling will be sited is:
 - (A) Identified in BCC 55.015(2)(b) or (d); and
 - (B) Not high-value farmland defined in BCC 55.015(2)(a); and
 - (C) Twenty-one acres or less in size.
- (c) (A) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(B) The tract is not a flaglot 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) The tract is a flaglot 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 flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. 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) "flaglot" 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 flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to that side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

[Ord 2001-0174]

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(14)),

- (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(6)) if the land division would separate the processing facility from the farm operation.

[Ord 26, Ord 90-0069, Ord 94-0108, Ord 96-0118, Ord 2001-0174]

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

- (1) A parcel for farm use may be created in the Exclusive Farm Use Zone, 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 new parcel may be allowed for a dwelling or dwellings not provided in conjunction with farm use may be approved, subject to the following approval by the Planning Official as follows:~~

(1) ~~(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) ~~(2) Series partitions (as defined in ORS 92.305) and subdivisions for non-farm dwellings are not allowed.~~

~~(3) A non-farm parcel east of the summit of the Coast Range shall meet the following criteria in addition to those of BCC 55.328(1) and (2):~~

- (c) ~~(a) The originating farm parcel or lot is equal to or larger than the applicable minimum lot or parcel size;~~
- (d) ~~(b) Is not stocked to the requirements under ORS 527.610 to 527.770;~~
- (e) ~~(c) Is composed of at least 95% Class VI through Class VIII soils; and~~
- (f) ~~(d) Is composed of at least 95% soils not capable of producing 50 cubic feet per acre per year of wood fiber; and~~
- (g) ~~(e) The new lot or parcel will not be smaller than 20 acres.~~
- (h) ~~(4) 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]~~

(2) West of the summit of the Coast Range, either of the following 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; or
- (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 ORS 215.284 (2) or (3);
 - (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:
 - (i) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber; and
 - (ii) Composed of at least 90 percent Class VI through VIII soils;
 - (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and
 - (F) 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.

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

(1) A nonfarm parcel for non-farm uses, except dwellings, listed in ORS 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 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, including cemeteries in conjunction with the church if:

(A) The church 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, meets the minimum lot or parcel size described in BCC 55.310(2)(a) 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:

(a) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

(b) 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]

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)(o). [Ord 2001-0174]

55.340 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; 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 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 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]

~~(1)~~(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 nonfarm dwelling 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 an improved public road except when required by an approved conditional use permit. [Ord 2001-0174]

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 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]

Chapter 57
Flood Plain Agriculture Zone (FPA)

57.005 Purpose. The Flood Plain 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 flood plain areas when such uses are compatible with recurring flooding and adjacent land utilization. [Ord 26, Ord 90-0069]

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

PERMITTED USES

57.105 Permitted Uses. The following uses are allowed in the Flood Plain 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]

CONDITIONAL USES

57.205 Conditional Uses Approved. The following uses may be allowed in the Flood Plain 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]

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 Flood Plain 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 an 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]

Chapter 58

Reserved for Expansion

Chapter 59
Reserved for Expansion

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]

60.050 Notice of Pending Action. Notice of all 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 and field offices 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]

60.075 Period of Validity of Discretionary Decisions

(1) A land use decision approving a dwelling pursuant to BCC 60.105(14) or (17), 60.108, or 60.109 shall be void four years from the date of final decision, if the development action is not initiated in that period. An extension may be granted for two additional years.

(2) A land use 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.

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. Where the SCS/NRCS 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 and be approved by the 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]

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 section (3) below, and pursuant to OAR 660-06-025(2)(d), "auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvest. An auxiliary use is removed when a particular forest practice has concluded.

(3) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of mineral exploration, gravel extraction and processing for construction and maintenance of forest roads in the immediate vicinity of the extraction and processing site ~~construction~~, solid waste disposal sites, 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 60.105(2). [Ord 2001-0174]

(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. electricity, telephone, natural gas) via overhead or underground lines within existing rights-of-way, and accessory equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which 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.

(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)(k) through (n). [Ord 2001-0174]

(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) Maintenance, repair, additions to, or replacement of existing legally established dwellings.

(a) To be eligible for replacement, an existing dwelling shall have:

(A) Intact exterior walls and roof structures;

(B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Interior wiring for interior lights;

(D) A heating system.

(b) Replacement must occur within one year of removal or destruction of the structure. [Ord 2001-0174]

(18) Structures accessory to a use listed in BCC 60.105(1) through (17). [Ord 2001-0174]

(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.

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

DWELLINGS IN FOREST CONSERVATION ZONE

60.107 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]

60.108 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 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 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. Where the SCS 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 and be approved by the Department of Forestry.

(3) (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]

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]

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.
- (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 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_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.

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

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:

(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 ~~and~~ or 660-034-0040, whichever is applicable.

(2) Firearms training facilities.

(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 3000 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]

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:

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, and minimize conflicts with forest and farm uses. Residents may be subjected to customary forest or farm management practices which produce noise, dust, smoke, and other impacts. The resource nature of surrounding properties can result in herbicide spraying, slash burning, timber cutting, farm operations, crown fires, big-game use and hunting, 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]

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-o) 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. -A parcel smaller than the minimum parcel size which contains an existing dwelling 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 dwelling existed prior to June 1, 1995; and
- (c) The remaining parcel, not containing the dwelling, meets the minimum land division standards for the Forest Conservation Zone or the remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone; and
- (d) The remaining parcel, not containing the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal.
- (e) As a condition of approval for a partition under BCC 60.320, 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.

~~(3) This restriction imposed under BCC 60.320(2) 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 55.105(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 a 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 BCC 60.320(12)(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.

(5)(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]

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) Shall not result in a parcel of less than 35 acres, except:
 - (A) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or
 - (B) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forest land; and
- (d) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum lot or parcel size of the zone or the minimum size required for dwellings approved under OAR 660-006-0027(1)(e).

(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]

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:

(1) ~~As a condition of approval, an applicant for a residence or structure 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.~~

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) The owner of any new structure shall maintain a primary 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.

(6) 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).

[Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103]

[Ord 2001-0174]

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 a property line, and at least forty-five (45) feet from a roadway. 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.

(e) The County governing body or its designate shall require as a condition of approval of a single-family dwelling in the Forest Conservation zone that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

~~(4) The owner of any new dwelling 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.~~

~~(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).~~

(46) The dwelling will not be sited on a slope of greater than forty (40) percent.

(57) The dwelling shall use a domestic water supply from a well or spring and a sewage disposal system as provided by Chapter 99.

(68) 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.

(79) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

(810) 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.

~~(11) A secondary fuel break shall extend a minimum of 100 feet in all directions around the primary safety zone. The goal within this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened and the likelihood of crown fires or crowning is reduced. [Redundant. Covered by (4)]~~

~~(12) 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.~~

~~(13) 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]

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 660-006-0027).

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 or to use the acreage of the tract to qualify another tract for the construction or siting of a 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 of _____)

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

Notary Public for Oregon

My Commission expires: _____

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.

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:

Parent Parcel Number*	Acreage	Number of Parcels or Lots Per Parent Parcel
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, 180 N.W. 5th Street, Corvallis, which report is incorporated by reference into this code. [Ord 26J, Ord 90-0069, Ord 96-0118]

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 94

Property Line Adjustments

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. Only legal property boundaries, may be adjusted through the provisions of this chapter. Legal property boundaries 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) Adjustment of a property line to correct the encroachment of a legally built structure over a property line shall not be subject to the minimum parcel or lot size standard, provided the adjustment transfers no more acreage than that necessary to correct the encroachment and establish the required setback to the adjusted property line.

94.100. Consolidation of Properties

- (1) If any of the properties proposed to be consolidated (through elimination of a property line) were created by subdivision or partition plat, legal consolidation requires a replat (a new subdivision or partition plat) in accordance with the standards of the Benton County Surveyor. A replat consolidating parcels and creating no new parcels shall be reviewed as a property line adjustment pursuant to this chapter.
- (2) To consolidate properties other than those described in subsection (1) of this section, consult with the Benton County Surveyor to determine the necessary procedure.

94.200 Properties in Non-Resource Zones. Adjustment of property lines where all of the land involved is non-resource-zoned shall be reviewed ministerially pursuant to the following procedure.

- (1) Application for a property line adjustment shall be made by submitting the materials required by BCC 94.400. The property line adjustment shall be reviewed ministerially pursuant to BCC 94.450, and approved if each of the resulting properties meets the criteria in 94.500.
- (2) Notwithstanding 94.500(1), a parcel currently smaller than the minimum parcel or lot size may be reduced in size by property line adjustment if each resulting parcel will be at least as large as the initial size of the smallest parcel.

94.300 Properties in Resource Zones. Adjustment of property lines where all of the land involved is resource-zoned shall be reviewed pursuant to the following procedure.

- (1) Application for a property line adjustment shall be made by submitting the materials required by BCC 94.400. Except as provided in subsection (2) of this section, the property

line adjustment shall be reviewed ministerially through the procedure listed in 94.450 and approved if each of the resulting properties meet the criteria in 94.500.

- (2) Notwithstanding 94.500(1), a resource-zoned parcel currently smaller than the minimum parcel or lot size may be reduced in size by property line adjustment if either:
 - (a) Each resulting parcel will be at least as large as the initial size of the smallest parcel;
or
 - (b) The Planning Official finds the property line adjustment will meet the criteria in subsections (A), (B) and (C) of this section in addition to the criteria of BCC 94.500(2) through (5). The Planning Official shall approve or deny the proposal based upon findings justifying the decision, and shall provide notice of the decision pursuant to BCC 51.610, 51.615, and 51.625.
 - (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.
- (3) 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;
 - (b) The adjustment is consistent with an approval for a nonfarm parcel; or
 - (c) 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.
- (4) A property line adjustment shall not 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.
- (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.

94.350 Split-zoned Properties. Adjustment of property lines that will result in a parcel containing more than one zone designation shall be reviewed pursuant to the following, in

addition to BCC 94.300 (for cases involving only resource-zoned land) or BCC 94.200 (for cases involving only non-resource-zoned land).

- (1) Creation of a split-zoned property may be allowed only if the owner of the property that will be split-zoned records a deed restriction, pursuant to subsection (3) of this section, 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.
- (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) A resource-zoned property that is adjusted to include non-resource-zoned land shall not be eligible for non-resource use on the non-resource-zoned portion of the property, unless the non-resource-zoned portion meets the applicable minimum parcel or lot size. Deed restrictions, pursuant to subsection (3) of this section, shall ensure compliance.
 - (d) A non-resource-zoned property that is adjusted to include resource-zoned land shall not be eligible for non-resource use on the resource-zoned portion of the property. Deed restrictions shall ensure compliance.
- (3) 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.

94.400 Application Requirements. An applicant for a property line adjustment pursuant to BCC 99.200 or 99.300 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 area in each property and the area proposed to be transferred, any existing structures, roads, easements, septic systems, 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.

94.450 Review procedure.

- (1) To obtain approval for a property line adjustment pursuant to this section, the applicant shall submit the information required in Section 94.400.
- (2) The Planning Official shall review and either grant preliminary approval or deny the application.
- (3) Approval or denial shall be communicated in writing to the applicant(s). Except as required by 94.300(2), no notice of decision pursuant to Chapter 51 is required.

94.500 Review Standards. An application for property line adjustment pursuant to BCC 94.200 or 94.300 shall be approved if each of the existing properties is legally created and each of the resulting properties:

- (1) Meets the applicable minimum parcel or lot size or complies with 94.200(2) or 94.300(2).
- (2) 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;
- (3) Maintains required setbacks;
- (4) Maintains required frontage, depth-to-width ratio, and flag-lot dimensions pursuant to Chapter 99 and the applicable zone.
- (5) A property line adjustment involving an existing property that is nonconforming to the standards referenced in subsections (3) and/or (4) of this section may be approved if the property line adjustment will not increase the degree of the nonconformity.

94.550 Final Approval

- (1) 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.
- (2) To obtain final approval, the applicant shall:
 - (a) For resulting properties smaller than 10 acres 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 (c) 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 (c).
- (c) Submit to the Community Development Department for review a document or documents ready for recording which contain legal descriptions of both resulting properties and the property transfer(s), and includes a map depicting the adjusted property line and resultant properties. The 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." If a survey or plat was required, the legal descriptions shall be prepared by a registered professional land surveyor.
- (d) Once the Planning Official has reviewed and approved the deed(s) and the survey or plat, the Planning Official shall sign the survey or plat indicating Final Approval of the property line adjustment, and shall record the deeds in Benton County Deed Records, thereby completing the property line adjustment.

~~94.005 Scope.~~ 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]

~~94.105 Standards.~~ A property line may be adjusted between two adjoining properties provided that:

- (1) ~~Each existing property is a legally divided unit of land.~~
- (2) ~~Each resulting property complies with the minimum parcel or lot size requirement for the zone, except:~~
 - (a) ~~A parcel or lot which is currently smaller than the minimum parcel or lot size need not comply with the minimum parcel or lot size requirement of the zone in which it is located.~~
 - (b) ~~The minimum parcel or lot size shall not apply when the property line adjustment corrects the encroachment of any structure over a property line.~~
- (3) ~~Any on-site sewage disposal system is protected to the satisfaction of the County Sanitarian. Where the property line adjustment may encroach on an existing system or replacement area, the applicant shall clearly identify the location of the system and replacement area. The Sanitarian may require an on-site inspection to locate the system and replacement area.~~
- (4) ~~Each resulting property complies with the general property design standards set forth in BCC 99.305 to 99.315, and the setbacks of the zone.~~
- (5) ~~Each resulting property complies with the access or frontage standards of BCC 99.405 to 99.420.~~

~~(6) If a property or structure does not currently conform to any standard of this section, the property line adjustment shall not increase the degree of non-conformity to that standard. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118]~~

~~**94.205 Initiating the Review Procedure.** (1) Any application for a property line adjustment shall be accompanied by a map which illustrates that the proposed property line adjustment complies with the standards of this chapter.~~

~~(2) The map shall conform to map standards established by the Planning Official.~~

~~(3) A survey of the adjusted property line shall be completed for all lands zoned Urban Residential (UR) and Rural Residential (RR) and for resulting properties of ten acres or less in other zones. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118]~~

~~**94.210 Decision.** (1) No public notice or hearing is required for an application for a property line adjustment, unless the property is zoned Exclusive Farm Use.~~

~~(2) The Planning Official shall approve or deny the proposal, based upon findings justifying the decision.~~

~~(3) If the property line adjustment is approved, the Planning Official shall sign and date the property line adjustment map and Notice of Decision.~~

~~(4) The Planning Official shall collect the current recording fees from the applicant and record the Notice of Decision of the property line adjustment in the County Deed Records. [Ord 7, Ord 90-0069, Ord 96-0118]~~

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]

99.110 Consideration. An applicant for a land ~~division~~partition 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. 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]

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 83.010(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]

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 Division 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. If the Division of State Lands responds to a notice provided by this section, approval of the application shall include one of the following notice statements:~~

~~(a) Issuance of a permit under ORS 541.605 to 541.685 by the Division of State Lands is required for the project before any physical alteration takes place within the wetlands; or~~

~~(b) The Division of State Lands has determined that no permit is required; or~~

~~(c) The Division of State Lands has determined that no permit is required until specific proposals to remove, fill or alter the wetlands are submitted.~~

~~(3) If the Division of State Lands fails to respond to any notice provided under this section within thirty (30) days of notice, the approval of the application shall include written notice to the applicant and the owner of record that the proposed activity may require state or federal permits. [Ord 90-0069]~~

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.

~~(3) Double frontage parcels or lots are permitted only to separate incompatible land uses or to limit access to an arterial or collector roadway. Double frontage parcels or lots are subject to BCC 99.430. [Ord 7, Ord 90-0069, Ord 96-0118]~~

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]

* * *

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]

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) 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]

* * *

Exhibit 2

Findings of Fact and Conclusions of Law Development Code Amendments; File No. LU-05-090

Development Code Provisions for Text Amendments:

BCC 53.605- *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 text.*

Findings: The proposed code amendments prompted by changes to state law are in response to "changing policies and conditions". Other amendments are to clarify text, or to update relative to changes in procedures or policies about how certain applications should be handled.

Conclusion: The proposed amendments meet the general criteria for consideration.

BCC 53.610(1)- *The Board of County 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 amendment.*

Findings: The Board of Commissioners directed the Planning Official to initiate these code amendments. The staff report and annotated draft code language attached to the staff report constitute a background report discussing the justification for the proposed amendment.

Conclusion: The proposed amendments were properly initiated.

BCC 53.620- *The Planning Commission shall conduct a public hearing to review a proposed text amendment. Following the public hearing, the Planning Commission shall make a recommendation to the Board to approve, deny, or modify the proposed amendment.*

BCC 53.625- *The Board of County 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.*

Findings: The Planning Commission conducted a hearing on February 7 and March 7, 2006, and forwarded a recommendation to the Board of Commissioners. The Board of Commissioners conducted a public hearing on April 4, May 2, May 16, and June 13, 2006. Adoption of the amendments by ordinance has proceeded pursuant to the Benton County Charter.

Conclusion: The amendments were considered and adopted through the proper procedure.

