



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

05/17/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: Benton County Plan Amendment
DLCD File Number 001-09

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: Tuesday, May 31, 2011

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Greg Verret, Benton County
Jon Jinings, DLCD Community Services Specialist
Chris Shirley, FEMA Specialist
Ed Moore, DLCD Regional Representative

<paa> YA



FORM **2**

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

DATE
STAMP

DEPT OF
MAY 11 2011
LAND CONSERVATION
AND DEVELOPMENT
For Office Use Only

Jurisdiction: **Benton County**

Local file number: **LU-08-096**

Date of Adoption: **5/3/2011**

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: **5/4/2009**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Adopted revised Flood Insurance Rate Maps provided by FEMA and revisions to Benton County floodplain regulations.

Revisions to the floodplain regulations were made as required by FEMA, as recommended by the policies identified in the Benton County Comprehensive Plan, and to ensure greater protection of citizens and structures against flood loss and flood damage during flood events.

Does the Adoption differ from proposal? **No, no explanation is necessary**

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **New location of floodplain overlay** to: **New location of floodplain overlay**

Location: **County-wide**

Acres Involved: **tt**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

1 **2** **3** **4** **5** **6** **7** **8** **9** **10** **11** **12** **13** **14** **15** **16** **17** **18** **19**

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

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

DLCD file No. 001-09 (17565) [16645]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

**DLCD
FEMA**

Local Contact: **Toby Lewis** Phone: **(541) 766-6819** Extension: **6296**
Address: **360 SW Avery Ave.** Fax Number: **541-766-6891**
City: **Corvallis** Zip: **97333-** E-mail Address: **toby.a.lewis@co.benton.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

<http://www.oregon.gov/LCD/forms.shtml>

Updated April 22, 2011

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

**In the Matter of Amending the Benton) ORDINANCE
County Zoning Map and Amending the)
Benton County Development Code.) No. 2009-0233**

WHEREAS, the Federal Emergency Management Agency has provided Benton County with revised Flood Insurance Rate Maps and Digital Flood Insurance Rate Maps (collectively referred to as revised Flood Insurance Rate Maps) and has directed Benton County to adopt the revised Flood Insurance Rate Map by June 2, 2011; and

WHEREAS, the Federal Emergency Management Agency has found the floodplain regulations in the Benton County Development Code to be out of compliance with the minimum development standards identified by that agency and has directed Benton County to adopt compliant floodplain regulations by June 2, 2011; and

WHEREAS, the Federal Emergency Management Agency has stated that failure to adopt the revised Flood Insurance Rate Maps and compliant floodplain regulations by June 2, 2011 will result in suspension from the National Flood Insurance Program. Such suspension would result in the loss of all federally backed flood insurance for property owners in unincorporated Benton County until such time as the revisions are adopted; and

WHEREAS, the amendments contained in this ordinance are intended to protect the health and safety of current and future residents of Benton County through decreased development in designated floodplain areas and increased elevation standards for structures and equipment in designated floodplain areas; and

WHEREAS, the amendments contained in this ordinance are intended to decrease damage to structures during a flood event through decreased development in designated floodplain areas and increased elevation standards for structures and equipment in designated floodplain areas; and

WHEREAS, the proposed amendments provide for increased accuracy in the application of floodplain regulations to specific properties and development projects; and

WHEREAS, the Benton County Planning Commission held a duly advertised public hearing on August 4, 2009 and September 1, 2009, and voted to recommend that the Board of Commissioners approve the Development Code amendments, as modified by the Planning Commission; and

WHEREAS, the Benton County Board of Commissioners held duly advertised public hearings on November 3, 2009, January 19, 2010, April 6, 2010, June 22, 2010, October 19, 2010, March 15, 2011, and April 5, 2011, and received public testimony; and

WHEREAS, the Board of County Commissioners finds that the proposed and Development Code amendments comply with the criteria of Benton County Code 53.505 through 53.625, and are consistent with the applicable policies and procedures 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 Development Code, and conducted the First Reading of the Ordinance on April 19, 2011; and

WHEREAS, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on May 3, 2011.

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

- PART I.** Short Title. Amendments to the Floodplain Management Overlay Zone portion of the Benton County Zoning Map.
- PART II.** Short Title. Amendments to the Benton County Development Code Regarding Floodplain Development.
- PART III.** Authority. The Board of County Commissioners of Benton County has authority to amend the Zoning Map and the Development Code pursuant to ORS Chapter 215 and the Benton County Charter.
- PART IV.** The Zoning Map amendment proposed in Planning File No. LU-08-096 is hereby approved, based on the Findings and Conclusions contained in the attached "Exhibit 1" and hereby adopted and incorporated herein.
- PART V.** The Development Code amendments proposed in Planning File No. LU-08-096 are hereby approved, based on the Findings and Conclusions contained in the attached "Exhibit 1" and hereby adopted and incorporated herein.
- PART VI.** Benton County Zoning Map is hereby amended as shown in "Exhibit 2".
- PART VII.** Benton County Development Code is hereby amended as shown in "Exhibit 3".
- PART IIX.** The effective date for these amendments to the Benton County Development Code will be:

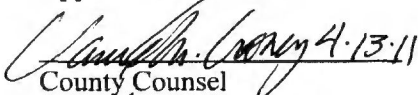
First Reading: April 19, 2011

Second Reading: May 3, 2011

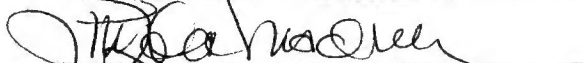
Effective Date: June 2, 2011

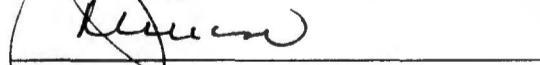
BENTON COUNTY BOARD OF COMMISSIONERS

Approved as to Form:


County Counsel


Recording Secretary


Linda Modrell, Chair


Jay Dixon, Commissioner

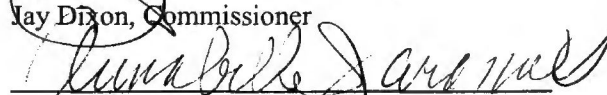

Annabelle Jaramillo, Commissioner

Exhibit 1

Findings of Fact and Conclusions of Law Zoning Map and Development Code Amendments; File No. LU-08-096

A. GENERAL FINDINGS

General History

In October 2002, Benton County began participating in the National Flood Insurance Program's (NFIP) Community Rating System (CRS). The Community Rating System is a program designed to encourage local governments to go beyond the minimum floodplain requirements identified by the Federal Emergency Management Agency (FEMA) in an effort to decrease damage to structures during a flood event. Some of the things Benton County does are:

- Requires the first habitable floor of all dwellings to be elevated at least 12 inches above the Base Flood Elevation.
- Requires all electrical, mechanical, and plumbing equipment servicing a structure to be elevated above the Base Flood Elevation.
- Provides information regarding the location of properties in relation to FEMA-identified Special Flood Hazard Areas to property owners, lending institutions, insurance companies, realtors, or any other interested person.
- Provides an annual informational mailing to all owners of property in or near FEMA-identified Special Flood Hazard Areas in Benton County. Among other things, this mailing discusses historic flooding in Benton County; sources of flooding in the county; steps to take before, during and after a flood event; and provides contact information for various agencies that deal with floodplain development activities and flood events.

In exchange for Benton County's adherence to stricter development standards within designated floodplains and provision of educational information to the public on a daily and an annual basis, Benton County has been awarded a Class 6 rating in the Community Rating System. The result is an automatic 20% discount for all flood insurance premiums for properties located in FEMA-identified floodplains in unincorporated Benton County.¹

During the past several years, the Federal Emergency Management Agency has been attempting to ensure that every community in the United States has an up-dated set of Flood Insurance Rate Maps (FIRMs). To this end, the most notable changes are that:

- The locations of the Special Flood Hazard Areas shown on the revised Flood Insurance Rate Maps issued to Benton County are now based on 5-foot contour intervals rather than the 20-foot contour intervals used in 1986; and
- Roads are now shown in several previously undeveloped areas of Benton County where significant development has occurred since the current maps were issued in 1986.

¹ A 5% discount is also automatically given to insurance policies for properties located *outside* FEMA-designated floodplains in unincorporated Benton County.

Additionally, because the maps are now available digitally, they can be overlaid on top of digital aerial photographs taken of the county to more accurately determine whether a structure or site is located within the floodplains identified on the FIRMs. No new Flood Insurance Studies were performed as part of the FIRM revision process for the unincorporated portions of Benton County, so designated flood elevations have not been modified, only the mapped locations of the floodplains.

As part of the Federal Emergency Management Agency's map adoption process, preliminary Flood Insurance Rate Maps are issued to communities on a county-wide basis, a community meeting is held by FEMA representatives to initiate a public comment period, and then (assuming there are no changes to the preliminary panels) each community is issued a Letter of Final Determination identifying a deadline for adoption of the preliminary FIRMs. As part of the FIRM adoption process, any portions of a community's development code that do not currently meet FEMA's minimum floodplain development standards must also be revised and adopted by the deadline identified in the Letter of Final Determination.

The consequence of not adopting a revised, FEMA-compliant floodplain ordinance is suspension from the National Flood Insurance Program (NFIP). Suspension from the NFIP means federally backed flood insurance will no longer be available to property owners in unincorporated Benton County.

In addition to changes to the Development Code required for compliance with FEMA's development standards, the 2007 Benton County Comprehensive Plan stipulates certain floodplain management changes to the Code. The attached amendments address both sets of mandates.

Benton County's Flood Insurance Rate Map Adoption Process

On December 5, 2008, the Federal Emergency Management Agency (FEMA) provided Benton County with a preliminary copy of the revised Flood Insurance Rate Maps (FIRMs) and Flood Insurance Study for the county. This set of maps consists of 58 panels and identifies FEMA-designated Special Flood Hazard Areas (SFHAs) along many rivers, creeks and streams in Benton County. The last time FEMA issued a set of Flood Insurance Rate Maps to Benton County was in 1986; the effective date of the current FIRMs is August 5, 1986.

On January 15, 2009, FEMA held two Consultation Coordination Officer meetings to discuss the preliminary maps and give members of the public, as well as government agencies, an opportunity to review and comment on the maps. During this meeting, it was noted that the Benton/Linn County line used on the preliminary FIRMs was not correct. At the end of the 30-day public comment period, Benton County was told that approximately 10 panels would be re-issued to reflect the corrected line between Benton County and Linn County.

On July 15, 2009, the Benton County Community Development Department sent out a notice to everyone who owned property located entirely or partially within or near all FEMA-designated Special Flood Hazard Areas, as identified on the preliminary Flood Insurance Rate Maps issued by that agency. This notice was sent in conformance with the notification requirements for Measure 56 Notification and Notification of a Public Hearing.

On July 21, 2009, FEMA provided Benton County with a preliminary copy of 13 revised FIRM panels identifying the current Benton/Linn County line.

On August 4, 2009, and September 1, 2009, the Planning Commission held public hearings, heard testimony, and voted to recommend the proposed amendments to the Benton County Zoning Map and Benton County Development Code.

On November 3, 2009, the Board of Commissioners held the first of several public hearings regarding the proposed amendments to the Benton County Zoning Map and Benton County Development Code. Public testimony was heard during the hearings and, on April 5, 2011, the Board of Commissioners voted to accept the proposed Zoning Map and Development Code revisions and directed staff to prepare an Ordinance.

B. PROPOSED AMENDMENTS

The following is a summary of the amendments.

Chapter 51 (Development Code Administration): Include definitions required for compliance with the minimum requirements of the Federal Emergency Management Agency.

Chapter 83 (Floodplain Management Overlay):

- Prohibition of new primary structures (e.g., dwellings) in the Special Flood Hazard Area (SFHA)²; exception for properties with no reasonable building site outside of the SFHA. Although discouraged, accessory structures will still be allowed within flood zones as long as they comply with all floodplain regulations;
- Restrictions on expansion of existing structures in the Special Flood Hazard Area;
- Increased elevation requirement from 12 inches above Base Flood Elevation (BFE) to 18 inches above BFE for structures constructed/placed in the Special Flood Hazard Area;
- Increased elevation requirement from “above BFE” to 12 inches above Base Flood Elevation for electrical, mechanical, plumbing, heating, etc. equipment servicing a structure;
- Provisions clarifying construction requirements for below-grade crawlspaces;
- Provisions clarifying construction requirements for accessory structures;
- Prohibition of at-grade accessory structures in the Special Flood Hazard Area, unless approved through a variance to the floodplain development regulations;
- Addition of variance procedure for structures located in the Special Flood Hazard Area;
- Definitions of several terms, as required by FEMA;
- Addition of language identifying provisions for allowance of development in a floodway for the purpose of stream habitat restoration; and
- Addition of a Floodplain Development Permit review process for all development in the Special Flood Hazard Area.

Chapter 94 (Property Line Adjustments), Chapter 95 (Partitions), and Chapter 97 (Subdivisions): Require applications for partition or subdivision to demonstrate compliance with the floodplain regulations in Chapter 83. The change would enable consideration of adequate availability for potential dwelling sites outside of the floodplain during the discretionary review of the land division.

² The Special Flood Hazard Area is commonly referred to as the 100-year floodplain and is shown on Benton County Flood Insurance Rate Maps as Zone A, AE, AO, AH, or A1-30.

C. FINDINGS APPLYING CODE CRITERIA

Development Code Provisions for Zone Change:

The Official Zoning Map may be amended if:

BCC 53.505(1)-The proposed zoning for the property is more appropriate than the current zoning, when considering existing uses, changes in circumstances since the current zoning was applied, or information that indicates that the current zoning was not properly applied.

Findings: The revised Benton County Flood Insurance Rate Maps (FIRMs) issued by the Federal Emergency Management Agency (FEMA) are based on more accurate topographical data, which results in increased accuracy of floodplain locations, and incorporate additional information regarding roads and structures that have been constructed in Benton County since the current flood maps were issued in 1986.

Conclusion: The proposed revisions to the Floodplain Management Overlay zone are more appropriate than the current location of this overlay zone.

BCC 53.505(2)-The impact on adjacent properties will be minimal.

Findings: The intent in establishing a Floodplain Management Overlay zone is to ensure that development in this area is performed in a manner that reduces property and structural damage during flood events; thereby minimizing the impacts of such development on adjacent properties.

Conclusion: Adoption of the revised Flood Insurance Rate Maps will allow Benton County to continue working towards minimizing the structural and property damage as a result of flood events in the county.

BCC 53.505(3)-Any significant increase in the level of public services which would be demanded as a result of the proposed zone change can be made available to the area.

Findings: It is expected that the proposed revisions to the floodplain regulations will limit continued development within the Floodplain Management Overlay zone; thereby reducing the demand for public services to properties located in this zone.

Conclusion: No increase in the level of public services is expected as a result of the proposed adoption of the revised Flood Insurance Rate Maps prepared by FEMA.

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: Since the current Flood Insurance Rate Maps became effective in 1986, many areas of Benton County have experienced significant development and more accurate elevation information has become available for public use. The Federal Emergency Management Agency prepared a revised set of FIRMs for Benton County; these revised maps take both of these factors into consideration and will be useful in Benton County's continued efforts to help minimize the negative effects of flooding in Benton County.

Conclusion: Changing conditions create the need for amendment of the Flood Insurance Rate Maps for Benton County and for amendment of the floodplain management provisions of the Development Code. 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: On January 21, 2009, the Board of Commissioners reviewed a background memo from the Planning Official, discussed the matter, and voted to initiate the amendments.

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 public hearing on August 4, 2009 and continued the hearing to September 1, 2009. The Planning Commission forwarded a recommendation to the Board of Commissioners on September 1, 2009.

The Board of County Commissioners conducted public hearings on November 3, 2009; January 19, 2010; April 6, 2010; June 22, 2010; October 19, 2010; March 15, 2011; and April 5, 2011. The Board of County Commissioners moved to accept the proposed amendments and directed staff to prepare an Ordinance on April 5, 2011.

Conclusion: The public hearings conducted by the Planning Commission and the Board of County Commissioners comply with the procedure stipulated in this code section.

Conclusion: The proposed amendments comply with the Development Code provisions for amending the zoning map and development code.

D. COMPREHENSIVE PLAN POLICIES

Floodplain

7.2.1 Benton County's floodplain management policies and actions will continue to emphasize more preventive than corrective measures. Flood damage prevention methods shall be non-structural to the degree possible, and include a combination of land use and code regulations, non-regulatory practices such as incentives, and a comprehensive emergency preparedness program.

Findings: The proposed code will implement non-structural³ flood damage prevention methods by requiring new primary structures to be sited outside Special Flood Hazard Areas whenever feasible and only allowing division of developable land if adequate building sites are identified outside of a SFHA. The purpose of these changes is to discourage continued development within known floodplains whenever possible.

In addition to the land use regulations mentioned above, the proposed code includes code regulations that require elevation of the first habitable floor of all new dwellings to a height that is at least 18 inches above the Base Flood Elevation and elevation of all electrical, mechanical, and plumbing servicing structures in the floodplain to a height that is at least 12 inches above the Base Flood Elevation.

While not implemented specifically through the proposed code changes, Benton County is continuing to improve its comprehensive emergency preparedness program. To this end, the proposed code changes prohibit construction of critical facilities within the Special Flood Hazard Areas identified on the revised FIRMs. Additionally, the Benton County Emergency Management Division recently stated that evacuation routes have been identified for Benton County and a Reverse 911 system has been purchased.

- 7.2.2** *Benton County shall allow accessory structures to be constructed within the floodplain; however, new primary structures shall not be allowed within the floodplain unless a parcel has insufficient buildable land outside the floodplain. Accessory structures shall not be located in the floodway.*

Findings: The proposed code, in Section 83.215(1), implements this policy.

- 7.2.3** *Benton County shall only allow land divisions within the floodplain when it can be demonstrated that each buildable lot or parcel has a suitable site for development outside of the floodplain boundary. Non-residential uses shall be excepted.*

Findings: The proposed code, in Section 83.605, implements this policy.

- 7.2.4** *Benton County shall strive to maximize open and undeveloped land in the 100-year floodplain to achieve flood mitigation, fish and wildlife habitat, and water quality objectives.*

Findings: Through increased elevation requirements for structures and the utilities servicing them in the floodplain and ensuring development occurs outside of floodplains where feasible, the proposed code includes several sections that work toward maximizing open and undeveloped land in the 100-year floodplain. Additionally, the proposed code, in Section 83.205(5) specifically implements the portion of this policy that deals with improvement of fish habitat.

- 7.2.5** *Benton County shall work to ensure that harmful runoff is not discharged directly into streams.*

Findings: While none of the proposed code revisions address this issue specifically, the decreases in floodplain development expected as a result of the proposed revisions will likely help avoid harmful runoff being discharged directly into streams.

- 7.2.6** *Benton County shall adopt standards to reduce peak runoff from impervious areas and not exceed pre-development storm flows.*

³ Non-structural in this sense refers to the prevention methods, not what is being protected. "Structural methods" include things such as dams and levees.

Findings: The proposed code revisions do not address this Comprehensive Plan policy at this time. However, the proposed revisions requiring siting of primary structures outside of Special Flood Hazard Areas whenever feasible will likely also decrease the amount of impervious areas created within these flood areas.

7.2.7 *Benton County shall establish parameters and/or objectives for managing stormwater drainage and shall encourage new development to use vegetated swales or open channels as an alternative to piping, where appropriate.*

Findings: Although, the parameters and objectives discussed in this policy are not addressed as part of the proposed code revisions, Benton County does encourage the responsible management of stormwater drainage and is implementing a five-year stormwater plan for the urbanized area around Corvallis.

7.2.8 *Benton County shall take measures to assure that wetland mitigation does not compromise existing stormwater functions of the land being used for the mitigation.*

Findings: Any wetland mitigation that will be located within a Special Flood Hazard Area requires land use review pursuant to the provisions regulating land development activities in a floodplain.

7.2.9 *Benton County shall develop stream corridor width and other standards and programs to preserve the properly functioning condition of streams. These standards can be varied by reach or basin and shall be based on functional objectives.*

Findings: Reduction of the number of primary structures sited within Special Flood Hazard Areas will help preserve the properly functioning condition of streams and rivers in Benton County.

Benton County is also beginning work on a separate project that will map and establish revised code regulations to protect riparian corridors along county rivers and streams.

7.2.10 *Benton County shall restrict development for human occupancy in those areas where access by standard emergency vehicles such as fire or ambulance is prevented by flood waters of 100-year flood levels.*

Findings: The proposed code, in Section 83.605(2)(b), implements this policy.

Conclusion: The proposed amendments are consistent with the policies of the Comprehensive Plan.

E. SUMMARY AND CONCLUSION

The Board of Commissioners concludes that the proposed map revision and text amendments comply with the Benton County Development Code and the Benton County Comprehensive Plan.

Exhibit 2

**Amendments to the Benton County Zoning Map
Zoning Map and Development Code Amendments; File No. LU-08-096**

The image below is a hardcopy reproduction of the data that will be incorporated into the Benton County Digital Zoning Map.

The Flood Insurance Rate Maps and Floodplain Management Overlay adopted through this Ordinance replace the existing Flood Insurance Rate Maps, Floodway Maps, and Floodplain Management Overlay.

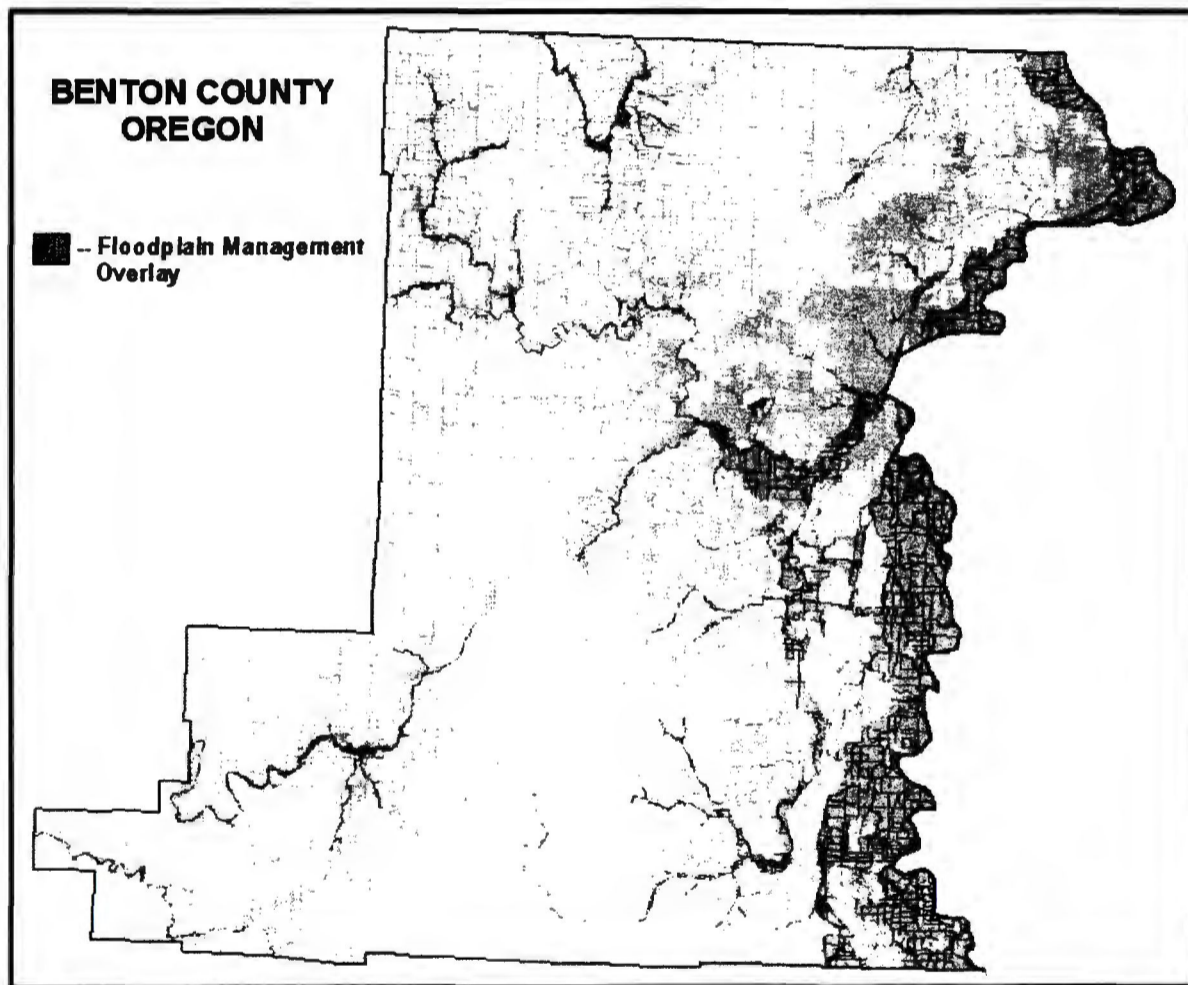


Exhibit 3

Amendments to the Benton County Development Code
Zoning Map and Development Code Amendments; File No. LU-08-096

Added text is underlined.
Deleted text is ~~struck through~~.

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. Also referred to as the "100-year flood." Designation on maps always includes the letter A.
- (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.
- (10) "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) "Dwelling, multi-family" means a building used by two or more families living independently of each other in separate dwelling units.
- (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.
- (13) "Farm use" means the following:
 - (a) In only the Exclusive Farm Use, Forest Conservation, and Multi-Purpose Agriculture zones, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or produce of, livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "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. 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
- (c) 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, Ord 2006-0214]

- (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.
- (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.
- (16) "Flag lot" means a parcel or lot connected by means of a narrow strip of land to a road right-of-way.
- (17) "Flood hazard" means a risk to life or property caused by flooding.
- (18) "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) "Floodplain" means a land area capable of being inundated by water during a base flood.

- (20) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. See the diagram at the end of Chapter 83. *Note that the "Floodway" within the Corvallis Urban Growth Boundary is based on a 0.2-foot increase in the water surface elevation (rather than a one-foot increase) as defined in BCC 83.010(3)(a).*
- (21) "Floodway fringe" means that portion of the floodplain of a river or other watercourse that lies landward of the floodway and serves as a temporary floodwater storage area during the base flood.
- (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.
- (23) "Frontage" means the boundary of a parcel or lot abutting a road.
- (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.
- (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.
- (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.
- (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.

- (28) "Land division" means a subdivision or land partition where a new lot or parcel is created.
- (29) "Landfill" means land used for the disposal of solid wastes, and may include the removal and classification of recycled materials.
- (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.
- (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.
- (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.
- (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.
- (35) "Minor stream" means that stretch of a creek which is not designated as a flood hazard area on the Flood Insurance Rate Maps.
- (36) "Manufactured dwelling" means:
- (a) A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962.
 - (b) A mobile house, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.
 - (c) A manufactured dwelling, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction.

- (37) "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.
- (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.
- (39) "Nonfarm use" means any use which is not a "farm use" as defined by this code.
- (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.
- (41) "Ordinary high water line" means the top of the bank of a stream or river.
- (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.
- (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]
- (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.
- (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.
- (46) "Planning Official" means the Director of the Development Department or the Director's designee.
- (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.
- (48) "Property line adjustment" means the relocation of a common boundary where an additional unit of land is not created.
- (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.
- (50) "Quasi-judicial land use action" is land use decision made pursuant to existing criteria regarding specifically identified persons or properties.
- (51) "Recreational vehicle" means a vacation trailer or other unit which is designed for human occupancy.
- (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.
- (53) "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) "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.
- (55) "Resource zone" means the Exclusive Farm Use, Multi-Purpose Agriculture, Floodplain Agriculture, Forest Conservation, and Open Space Zones.
- (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.
- (57) "Right-of-way" means the area between the boundary lines of a road.
- (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.
- (59) "Roadway" means the road surface improved for use by vehicular traffic.

- (60) "Sanitary landfill" means land used for the disposal of solid wastes in accordance with State and County requirements.
- (61) "School" means a public or private place or institution for teaching, instructing, educating, and learning; including elementary, secondary, college or university levels, and trade schools; including their accessory structures.
- (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 but 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.
- (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.
- (64) "Secondary road" means a road which is not required to meet County urban or rural road standards.
- (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.
- (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.
- (67) "Structural alterations" means a change in the supporting members of a structure, such as bearing walls, columns, beams, girders, or foundations.
- (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.
- (69) "Subdivide land" means to divide land into four or more lots within a calendar year.
- (70) "Subdivision" means either the act of subdividing land or a tract of land subdivided.
- (71) "Surface mining" means the extraction or processing of mineral or aggregate resources.
- (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]
- (73) "Urban fringe" means that area between an urban growth boundary and the city limits of an incorporated city.

- (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.
- (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.
- (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.
- (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, Ord 2006-0214, Ord 2009-0233 eff. 6/2/2011]

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

- (1) Exclusive Farm Use (EFU)
- (2) Multi-Purpose Agriculture (MPA)
- (3) Floodplain Agriculture (FPA)
- (4) Forest Conservation (FC)
- (5) Open Space (OS)
- (6) Rural Residential (RR)
- (7) Urban Residential (UR)
- (8) 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, Ord 2009-0233 eff. 6/2/2011]

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

- (1) Floodplain Management (/FP) The depiction of the Floodplain Management Overlay Zone on the Official Zoning Map is approximate; the official boundaries of this zone are shown on the Flood Insurance Rate Maps provided by the Federal Emergency Management Agency.
- (2) Greenway Management (/GM) The depiction of the Greenway Management Overlay Zone on the Official Zoning Map is approximate; the official boundaries of this zone are shown on the adopted Willamette River Greenway maps located in the Planning Division.
- (3) Flexible Industrial (/FI)
- (4) Airport (/A) The depiction of the Airport Overlay Zone on the Official Zoning Map is derived from the boundaries described in Chapter 86. In the event of a conflict between these, the text description in Chapter 86 shall prevail.
- (5) Goal 5 Resources
 - (a) Wetland (/W)
 - (b) Surface Mining (/SM)
 - (c) Sensitive Fish and Wildlife Habitat (/FW)
- (6) Use (/U)
- (7) Natural Features Overlays
 - (a) Natural Hazards
 - (b) Natural Resource

[Ord 97-0131; Ord 2004-0196; Ord 2006-0214, Ord 2009-0233 eff. 6/2/2011]

51.110 Official Zoning Map.

- (1) The Official Zoning Map shall divide Benton County into primary and overlay zones and shall be consistent with the Benton County Comprehensive Plan Map and adopted City Comprehensive Plan Maps. The boundaries of the zones shown on the Official Zoning Map may be modified in accordance with the procedures for a zone change pursuant to this code. Annexation of territory to a City shall result in automatic amendment of the zoning map as of the effective date of annexation. [Ord 90-0069]
- (2) The Official Zoning Map shall be maintained by the Planning Official in the offices of the Development Department. The Official Zoning Map adopted with an effective date of July 8, 2004, exists in official form as an electronic map layer within the Benton County geographic information system at a scale of 1:24,000.
 - (a) The official copy of the electronic version of the zoning map shall be recorded onto permanent media to ensure the electronic information is protected.
 - (b) When the official zoning map is amended by Ordinance, the Planning Official shall cause the changes to be made to the electronic version of the zoning map, and shall cause the electronic map's metadata to be annotated with the date and type of change and the ordinance number.
 - (c) Any zoning map or map containing data from the official zoning map shall be annotated with the date of the most recent revision of the zoning map by ordinance, and shall state that the map data is valid at a maximum scale of 1:24,000.

(3) The Official Zoning Map adopted with an effective date of July 8, 2004, is intended to be consistent with the June 2, 1982 Zoning Map. The exceptions are those zone change requests adopted by ordinance after June 2, 1982. The owner of any property, the zoning of which was inadvertently changed by the conversion from the 1982 Zoning Map to the 2004 Zoning Map, may obtain correction of the error through the procedure in BCC 53.530.

(4) Interpretation of the zoning map shall comply with the following:

- (a) Zone boundaries are generally intended to coincide with discernable geographic features or property lines. In cases where a zone line crosses a lot or parcel without reference to a specific landmark (such as a road or stream), it may be necessary to consult the record of hearings that led to adoption of the Zoning Map, or other relevant information, in order to determine the precise location of the zone line.
- (b) Zone boundaries that are indicated as approximately following roads, railroad lines, streams or other water bodies shall be construed to follow the centerlines of these entities.
- (c) Zone boundaries that are indicated as approximately following city limits, urban growth boundaries, or property lines shall be construed to follow those lines.
- (d) Boundaries indicated as parallel to or extensions of the features listed above shall be so construed.
- (e) Where a water body, such as a river, changes location through annual erosion or accretion (i.e. the gradual and imperceptible removal or addition of alluvial material), any coincident zone line shall be interpreted as moving with the centerline of that body of water. Where a water body changes location through avulsion (i.e. the sudden and visible loss or addition to land, or the sudden change in the bed or course of the stream), any coincident zone line shall be interpreted as remaining in the location of the water body prior to the avulsion.

(5) Where a right-of-way is vacated, the zone requirements applicable to the property of which the vacated property becomes a part shall apply to the vacated property.

(6) Errors in the Official Zoning Map shall be resolved by means of the procedure in BCC 53.530.

(7) Refinement of the zoning map to improve consistency with the interpretation standards of subsection (4) may be effected under the direction of the Planning Official.

[Ord 2004-0196]

THE PLANNING OFFICIAL

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

(1) The Planning Official shall provide the official interpretation of the Comprehensive Plan and Development Code, including the Zoning Map and Comprehensive Plan Map. Any member of the public may apply for a Planning Official's Interpretation of provisions of the Comprehensive Plan or Development Code or their application to a specific property, project, or issue. The Planning Official's Interpretation is an administrative land use action. The Interpretation shall be based on the Benton County Comprehensive Plan, the purpose and intent of the applicable code chapter(s), and any other information deemed relevant by the Planning Official. The interpretation cannot constitute a legislative act effectively amending the code or Comprehensive

Plan. Notice of the decision shall be published in a newspaper of general circulation pursuant to BCC 51.625(2) and notice shall be provided to the applicant and any member of the public who has requested in writing to the Community Development Department within the past year to be notified of land use actions regarding the subject matter of the Interpretation. Additionally, for questions of interpretation pertaining to specific properties or land areas, notice shall be provided to owners of neighboring properties as specified in BCC 51.610(1)(a) through (c). The decision is subject to appeal under the provisions of BCC 51.805 through 51.840. The application for an interpretation may be referred to the Planning Commission at the discretion of the Planning Official. If referred, the Planning Commission will consider the matter as a quasi-judicial land use action at a public hearing pursuant to BCC 51.705 through 51.725.

(2) The Planning Official may approve a use not specifically listed in the Development Code in any zone, provided that the use is substantially similar in character, scale, and impact to permitted uses in the zone, and is compatible with the purpose of the zone. However, if the use in question is specifically listed in another zone, the Planning Official shall not approve the use through this procedure.

(3) The Planning Official, and any employee of Benton County, may enter upon land subject to a land use application or to enforce any provision of this code to make examinations and surveys in the performance of their functions.

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

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

CITIZEN ADVISORY COMMITTEES

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

51.310 Purpose. The purpose of a CAC is to:

(1) Encourage participation of citizens in all phases of the land use planning process and other aspects of County government that affect their area;

(2) Increase communication between citizens and elected and appointed County officials;

(3) Obtain input from citizens in a CAC area on land use legislation and actions affecting their area; and

(4) Assist the County and educate citizens regarding the technical and legal aspects of land use planning. [Ord 90-0069]

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

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

51.325 CAC Duties. (1) The Planning Official shall refer proposed legislative and quasi-judicial land use actions which require a public hearing to each affected active CAC, as determined by the Planning Official, for review and recommendation.

(2) The Planning Official may refer a proposed land use action which does not require a public hearing to an affected CAC for review and recommendation.

(3) Failure of a CAC to meet or to forward its recommendation to the Planning Official prior to the hearing or decision shall not affect the validity of the decision. [Ord 90-0069]

THE PLANNING COMMISSION

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

51.405 Powers and Duties. (1) The Planning Commission shall review and make recommendations to the Benton County Board of Commissioners concerning proposed amendments to the Benton County Comprehensive Plan, Development Code, or Zoning Map. Prior to making a final recommendation on a proposed amendment, the Planning Commission shall hold at least one public hearing on the amendment.

(2) The Planning Commission may propose amendments or additions to the Benton County Comprehensive Plan, Development Code, or Zoning Map. Prior to holding a public hearing on such proposed amendments, the Planning Commission shall receive preliminary authorization to consider amendments from the Board of Commissioners.

(3) The Planning Commission shall decide appeals of a decision of the Planning Official on applications made pursuant to this code, and shall decide applications as the initial decision maker as provided by this code. The Planning Commission shall hold a public hearing before deciding any land use action or appeal.

(4) The Planning Commission shall serve as the Committee for Citizen Involvement (CCI). The CCI shall assist the Board of Commissioners with the development and evaluation of Benton County's Citizen Involvement Program as it relates to land use planning. The CCI shall conduct an annual review of the Citizen Involvement Program, and report its findings to the Board of Commissioners. [Ord 90-0069]

51.410 Membership. (1) The Planning Commission shall consist of nine members appointed by the Board of Commissioners for staggered four year terms. Terms shall commence on January 1st, except as otherwise provided by BCC Chapter 3.

(2) In the event that a Planning Commissioner resigns or leaves office prior to the expiration of his or her term, the Board of Commissioners shall appoint a person to serve the unexpired portion of the original term.

(3) Members of the Planning Commission may be removed from office by the Board of Commissioners pursuant to BCC Chapter 3.

(4) No more than two voting members of the Planning Commission shall be engaged in the same kind of occupation, business, trade, or profession. No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employees of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. [Ord 90-0069]

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

APPLICATION AND FEES

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

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

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

51.515 Application Fee. (1) The Planning Official may charge a fee to process an application filed pursuant to the Development Code.

(2) Fees shall be set by order of the Board of Commissioners. The Planning Official shall review application fees annually and shall recommend proposed fees and fee changes to the Board for adoption. [Ord 90-0069]

51.520 Waiver of Fees. (1) Any application fee may be waived or reduced by the Planning Official upon written request if:

- (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]

NOTICE REQUIREMENTS

51.605 When Public Notice is Required. (1) The Planning Official shall issue public notice pursuant to BCC 51.605 to 51.625 of applications for the following quasi-judicial land use actions:

- (a) Appeal of a decision of the Planning Official or Planning Commission.
- (b) Conditional use.
- (c) Variance.
- (d) Nonconforming use alteration.
- (e) Vested right determination.
- (f) Nonfarm parcel creation.
- (g) 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.

(2) The Planning Official shall issue public notice pursuant to BCC 51.605 to 51.630 for the following legislative land use actions:

- (a) Comprehensive Plan text amendment.
- (b) Development Code text amendment.

(3) The Planning Official shall issue public notice pursuant to BCC 51.621 for limited land use decision actions.

(4) Notwithstanding subsection (1) of this section, the following quasi-judicial actions require notice of decision pursuant to BCC 51.625, but not notice of proposed action pursuant to BCC 51.610:

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

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

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.

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

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

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

(4) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

[Ord 2006-0214]

51.610 Public Notice Requirements for Quasi-Judicial Land Use Actions. (1) 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).

(6) 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 cost;

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

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

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

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

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

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER. The recipient of this notice is hereby responsible to forward a copy of this notice to every person with a documented interest, including a renter or lessee.

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

51.618 Public Notice Requirements for Legislative Land Use Actions. (1) 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.

(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.

(3) The Planning Official shall make a reasonable attempt to mail notice of a proposed legislative land use action to all citizens, groups, organizations, and agencies, which testified in the most recent legislative action which addressed the subject matter under review in the proposed legislative land use action when such past legislative action occurred within the previous four years.

(4) The Planning Official shall mail notice of a proposed legislative land use action to all groups, organizations, and agencies, whether comprised of citizens or professionals, which have declared an interest in the subject matter addressed by the proposed legislative land use action. Such declaration shall have been directed to the Planning Official in writing within one year of the pending public hearing on the proposed legislative land use action as a specific request to be notified of legislative proposals regarding a particular subject or subjects.

(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, Ord 2006-0214]

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

51.621 Form of Notice of Limited Land Use Decision Actions (see definition of "limited land use decision"). (1) The Planning Official shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(2) The notice for limited land use decisions shall:

- (a) Provide a 14-day period for submission of written comments prior to the decision;
- (b) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall

be raised with sufficient specificity to enable the County decision maker to respond to the issue;

(c) List, by commonly used citation, the applicable criteria for the decision;

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

(e) State the place, date and time that comments are due;

(f) State that copies of all evidence relied upon by the applicant are available for review and that copies can be obtained at cost;

(g) Include the name and phone number of a local government contact person;

(h) Provide notice of the decision to applicant and any person who submits comments under subsection (a) of this section. The notice of decision must include an explanation of appeal rights; and

(i) Briefly summarize the local decision making process for the limited land use decision being made. [Ord 93-0096, Ord 2006-0214]

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

(1) The Planning Official shall mail a notice of decision for which BCC 51.605(1) requires public notice to the applicant, the appellant in the case of an appeal, and the affected property owners as defined in BCC 51.610(1). In addition, the Planning Official shall mail notice of decision to all persons who testified either orally or in writing regarding the proposed action. The Planning Official shall mail a notice of decision within two days from the date of the final decision as defined in BCC 51.810. If the Planning Official fails to mail the notice of decision within two days, the appeal period of a decision to a County appellate body shall be extended one day for each day the mailing of the notice is delayed. The Planning Official shall 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 be mailed only to all persons who testified either orally or in writing regarding the proposed action. Furthermore, no published newspaper notice of decision is required.

(3) The notice shall be entitled "Notice of Decision" and shall describe the location and nature of land use action and the nature of the decision, including any conditions of approval. The notice shall state the date of the decision and shall state that copies of the Findings of Fact are available for inspection at the Community Development Department, and that a copy will be provided at cost. The notice shall also state that the decision may be appealed, shall state the requirements for standing to appeal pursuant to BCC 51.825, shall state the appeal period, and shall state the name, address, and phone number of the appropriate appellate authority. [Ord 90-0069]

51.630 Notice of Decision Regarding a Legislative Land Use Action. (1) The Planning Official shall mail a notice of decision to all persons who testified either orally or in writing regarding the proposed action. The Planning Official shall mail a notice of decision within two days from the date of the final decision as defined in BCC 51.810. If the Planning Official fails to mail the notice of decision within two days, the appeal period of a decision to a County appellate body shall be extended one day for each day the mailing of the notice is delayed.

(2) The notice shall be entitled "Notice of Decision" and shall describe the nature of the land use action and the nature of the decision. The notice shall state the date of the decision and shall

state that copies of the amendment and the Findings of Fact are available for inspection at no cost at the Community Development Department during specified hours, and that a copy will be provided at cost. The notice shall also state that the decision may be appealed, shall state the requirements for standing to appeal pursuant to BCC 51.825, shall state the appeal period, and shall state the name, address, and phone number of the appropriate appellate authority. [Ord 92-0092, Ord 2006-0214]

PUBLIC HEARINGS

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

51.710 Exhibits and Evidence for Hearings Regarding Quasi-Judicial Land Use Actions and Limited Land Use Decision Actions. (1) All documents or evidence relied on by the applicant shall be submitted to the Community Development Department at least 14 days prior to the date of the hearing and be made available to the public at the time notice pursuant to BCC 51.610 and 51.615 is provided.

(2) The staff report to be used at the hearing shall be available at least seven days prior to the date of the hearing.

(3) Any person may submit exhibits or written comments prior to or at a public hearing. Such exhibits and written comments shall be attached to the staff report. If such exhibits or written comments are submitted after the staff report is made available pursuant to subsection (2) of this section, the Planning Official shall submit them at the public hearing for inclusion into the record. As used in this section, "written comments" shall mean comments written or printed on paper, whether delivered in person, by mail, or by facsimile transmission. "Written comments" shall also mean electronic mail (e-mail), provided the comments clearly state an intent for such comments to be included in the record and the transmittal is received during the comment period by the staff contact listed on the notice of application.

(4) If the applicant modifies the application (e.g. details of the use requested, the size or number of parcels/lots proposed) after the deadline established in BCC 51.710(1), any party shall be entitled to a continuance of the hearing to consider and comment on the modified application. The applicant may modify arguments or evidence without triggering a continuance. The time period for a continuance under this section shall be at the discretion of the hearings authority, up to a maximum of 14 days. A continuance granted pursuant to this subsection shall not be subject to the 120/150-day local action deadline of BCC 51.535. [Ord 90-0069, Ord 93-0096, Ord 2000-0161, Ord 2006-0214]

51.715 Exhibits and Evidence for Hearings on Legislative Land Use Actions. (1) The proposed ordinance shall be drafted and made available to the public at the time notice pursuant to BCC 51.618 is provided.

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

51.720 Conduct of a Public Hearing. (1) A public hearing shall be conducted in accordance with the bylaws of the hearing authority.

(2) If the hearing is quasi-judicial, or a limited land use decision action, the applicant for the initial land use decision shall testify first, followed by those persons in favor of the application. The Chair shall then call for testimony from those in opposition to the application. In an appeal

hearing, testimony in opposition shall begin with the appellant, if different from the applicant. The Chair shall then call for testimony from governmental bodies. Prior to closing the hearing, the Chair shall allow the applicant an opportunity to rebut opposing testimony. Rebuttal shall be limited to issues raised during testimony in opposition or by governmental bodies. Following deliberation and decision, the hearings authority shall state that the decision is subject to appeal, shall state the appeal period, shall state the name of the appellate authority, and shall note that the address and phone number of the appellate authority will be contained in the mailed notice of decision.

(3) If the hearing is legislative, the Chair will call for testimony generally and shall close the hearing after every person has been given an opportunity to comment.

(4) At the commencement of a quasi-judicial or limited land use decision action hearing, a presentation shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony and evidence must be directed toward the applicable substantive criteria or other criteria in the plan or Development Code which the person believes to apply to the decision; and

(c) States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

(5) Prior to closing an initial evidentiary hearing on a quasi-judicial or limited land use decision action, any participant may request an opportunity to present additional evidence, arguments or testimony. If such a request is made, the hearings authority shall either grant a continuance of the hearing pursuant to (a) below, or shall hold the record open for additional written testimony pursuant to (b) below.

(a) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days hence. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(b) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record and allow any person to raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(c) A continuance or extension granted pursuant to this section shall be subject to the local action deadline set forth in BCC 51.535, unless the continuance or extension is requested or agreed to by the applicant.

(d) Unless waived by the applicant, the hearings authority shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the

record, but shall not include any new evidence. This seven-day period shall not be subject to the local action deadline set forth in BCC 51.535.

(6) After a quasi-judicial or limited land use decision action hearing has been closed and the record has been closed, the hearings authority shall decide the issue based on the evidence and testimony in the record and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision and explains the justification for the decision based on the criteria, standards and facts set forth. The hearings authority shall adopt findings of fact in support of its decision. The hearings authority shall not make a decision which is different from the proposal described in the notice of proposed action provided pursuant to BCC 51.615(1) to such a degree that the notice of the proposed action does not reasonably describe the final decision, unless the hearings authority continues the public hearing for further testimony and issues new notice pursuant to BCC 51.605 to 51.625 which reasonably describes the proposed modification. [Ord 90-0069, Ord 93-0096, Ord 2000-0161, Ord 2006-0214]

51.725 Continuance of a Public Hearing. (1) In addition to a continuance required by BCC 51.720(5), the hearing authority may continue a public hearing at its discretion to a date and time certain. If a quorum of the hearing authority does not appear for a scheduled public hearing, the public hearing shall automatically be continued to the date and time of the next regularly scheduled meeting. Where a hearing is continued by the hearing authority, no additional public notice shall be required unless the continuation results in a change in the application to such a degree that the notice of the proposed action does not reasonably describe the application.

(2) When the hearings authority continues a hearing or reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(3) A continued hearing shall be conducted in the same manner as the original hearing pursuant to the requirements of BCC 51.720. [Ord 90-0069]

APPEALS

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

(1) Except as otherwise provided by this code, a decision of the Planning Official may be appealed to the Planning Commission and a decision of the Planning Commission may be appealed to the Board of Commissioners.

(2) A decision of the Historic Resources Commission may be appealed to the Board of Commissioners. [Ord 26, Ord 90-0069, Ord 2006-0214]

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

(1) A decision of the Planning Official becomes final on the date the Notice of Decision is signed by the Planning Official.

(2) A decision of the Planning Commission becomes final upon the date of the vote of the Planning Commission rendering a decision and adopting findings. A Planning Commission recommendation to the Board is not a final decision for purposes of appeal.

(3) A decision of the Board of Commissioners becomes final as follows:

(a) A decision of the Board regarding a land use action or limited land use decision action that requires adoption of an ordinance becomes final upon the date notice is mailed to those entitled pursuant to BCC 51.630, after the second reading of the ordinance as provided by the Benton County Charter.

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

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

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

51.825 Standing to Appeal. (1) Any person may appeal a decision of the Planning Official to the Planning Commission.

(2) The Planning Commission may determine upon its own initiative to call up a decision of the Planning Official for review. The Planning Commission may call up a decision of the Planning Official in one of two ways:

(a) If a public meeting of the Planning Commission occurs within the appeal period, the Commission may determine by majority vote at the public meeting to review a decision of the Planning Official and shall set a public hearing on the decision for the next regular Planning Commission meeting for which public notice pursuant to BCC 51.605 to 51.625 can be provided. No appeal fee shall be charged.

(b) If a public meeting of the Planning Commission does not occur within the appeal period, an individual Planning Commissioner may cause a decision to be reviewed at a public hearing at the next regular meeting for which public notice can be provided by filing a signed notice of appeal with the Planning Official within the appeal period. No appeal fee shall be charged.

(3) A person may appeal a decision of the Planning Commission to the Board of Commissioners if while the record was open the person provided written or oral testimony to the Planning Commission regarding the decision .

(4) The Board of Commissioners may determine by majority vote to call up a decision of the Planning Commission for review if the vote occurs within the appeal period. [Ord 26, Ord 90-0069, Ord 2006-0214]

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

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

51.831 Fee Limitations. (1) Where the county provides only a notice of the opportunity to request a hearing, the county may charge a fee for the initial hearing. This fee shall be limited to the lesser of the County's cost for preparing and conducting the hearing or \$250. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by:

- (a) The Department of Land Conservation and Development; or
- (b) Citizen Advisory Committees established by the Board of Commissioners and whose boundaries include the site. [Ord 93-0096, Ord 98-0134, Ord 2006-0214]

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

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

51.840 Conduct of an Appeal Hearing. (1) The appellate authority shall conduct a public hearing pursuant to BCC 51.705 to 51.725 prior to deciding an appeal. The appellate authority shall review the record of the decision that is under appeal, and shall additionally consider any new evidence or testimony that is submitted into the record at the hearing. Any person may appear and be heard. The appellate authority shall affirm, reverse, or modify in whole or in part the decision that is under appeal. The appellate authority shall not modify the decision on appeal to such a degree that the notice of the appeal does not reasonably describe the final decision, unless the appellate authority continues the public hearing for further testimony and issues new notice pursuant to BCC 51.605 to 51.625 which reasonably describes the proposed modification. The appellate authority shall adopt findings of fact supporting its decision.

(2) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Board of Commissioners. Such issues shall be raised with sufficient specificity to afford the Board of Commissioners and the parties an adequate opportunity to respond to each issue. [Ord 90-0069]

RECONSIDERATION OF DECISION BEFORE LUBA ON APPEAL

51.900 Reconsideration by Board of Commissioners of Decision Before LUBA on Appeal. At any time after the filing of a notice of intent to appeal a land use decision or limited land use

decision to the Land Use Board of Appeals, and prior to the date set for filing of the record, the Board of Commissioners may withdraw its decision for purposes of reconsideration. If the Board of Commissioners withdraws an order for purposes of reconsideration, it shall within such time as the Land Use Board of Appeals allows, affirm, modify, or reverse its decision. [Ord 93-0096]

REMAND HEARINGS

51.905 Hearing Procedure on Remand from LUBA. When a final decision of the Board of Commissioners on a quasi-judicial land use action is remanded to the County by the Oregon State Land Use Board of Appeals (LUBA), the Board of Commissioners shall hold a hearing on remand. Notice shall be given pursuant to BCC 51.605 to 51.625, and the hearing shall be conducted pursuant to BCC 51.705 to 51.840 except that notice shall be provided at least 20 days prior to the hearing, and evidence and testimony shall be limited to the criterion or criteria or the issue or issues upon which LUBA based its decision to remand. These criteria or issues shall be described in the notice and at the hearing as provided by BCC 51.615(1)(b) and 51.720(4).

[Ord 90-0069, Ord 2006-0214]

Chapter 83

Floodplain Management Overlay (/FP)

83.005 Purpose. The Floodplain Management Overlay Zone shall implement the provisions of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as well as the Benton County Comprehensive Plan. It is the purpose of this ordinance to promote public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life, health, and property;
- (2) Minimize expenditure of public money and costly flood control projects;
- (3) Minimize the need for rescue, emergency services, and relief associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions and unnecessary disruption of commerce, access and public service during times of flood;
- (5) Minimize damage to public facilities and utilities such as water purification and sewage treatment plants; water and gas mains; electric, telephone, and sewer lines; streets; and bridges located in special flood hazard areas;
- (6) Decrease the cost of flood insurance;
- (7) Help maintain a stable tax base by providing for the sound use and development of special flood hazard areas;
- (8) Ensure that potential buyers are notified that property is in an area of special flood hazard;
- (9) Ensure that those who occupy the special flood hazard areas assume responsibility for their actions;
- (10) Recognize and preserve the natural flood mitigation functions of floodplains; and
- (11) Preserve the ecosystem functions of floodplains.

[Ord 26, Ord 90-0069, Ord 2009-0233 eff. 6/2/2011]

83.010 Application.

- (1) The Floodplain Management Overlay Zone shall apply to all areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Benton County, Oregon and Incorporated Areas," dated June 2, 1011, with accompanying Flood Insurance Rate Maps (FIRM) and Digital Flood Insurance Rate Maps (DFIRM), except as otherwise provided by this code, adopted effective June 2, 2011. The Flood Insurance Study and accompanying maps are hereby incorporated by reference into the Development Code and are on file at the Benton County Community Development Department, 360 SW Avery Avenue, Corvallis, Oregon.
- (2) The Floodplain Management Overlay Zone is divided into two subzones: the floodway and the floodway fringe. The boundaries of the floodway and the floodway fringe shall be those delineated on the Flood Insurance Rate Maps except as otherwise provided by BCC 83.010(3).

(3) **Corvallis Urban Fringe.** Floodplain and floodway boundaries within the Corvallis Urban Fringe (the unincorporated portion of the Corvallis Urban Growth Boundary) shall be determined pursuant to the following subsections. Furthermore, within the Corvallis Urban Fringe, restrictions and use limitations in addition to those outlined in BCC 83.015 through 83.300 and BCC 83.405 are outlined in the provisions of BCC 83.310 and 83.505 below. In the case of any conflicts between the additional provisions in BCC 83.310 and 83.505 and the standard provisions of BCC 83.015 through 83.300 and BCC 83.405, the more restrictive shall apply.

(a) **Floodway.**

(A) **General Determination.** The floodway within the unincorporated portion of the Corvallis Urban Fringe shall be based upon a 0.2-foot rise standard for an increase in the base flood elevation rather than a one foot rise standard utilized by FEMA. The floodway boundary of streams within the unincorporated portion of the Corvallis Urban Growth Boundary shall be based upon maps prepared by the City of Corvallis which apply the 0.2-foot rise standard.

(B) **Map Refinements.** For precise determinations when development activities are proposed near a mapped floodway, the applicant shall submit information prepared by an Oregon-registered Professional Land Surveyor or Oregon-Licensed Civil Engineer, demonstrating the area that must be kept free from encroachments in order to discharge the base flood (100-year flood) without cumulatively increasing the water surface elevation more than 0.2 feet and demonstrating that the proposed activities will not impact the floodway.

(b) **Floodplain (Floodway Fringe).**

(A) **General Determination.** The floodplain boundaries shall be determined pursuant to BCC 83.010(1).

(B) **Map Refinement.** For the purposes of BCC 83.505 and 83.605, floodplain location and extent may be determined using FEMA-provided base flood elevation data combined with topographic mapping (2-foot or less contour interval) produced from a survey by an Oregon-registered Professional Land Surveyor or Oregon-Licensed Civil Engineer. Alternatively, the official topographic mapping maintained by the City of Corvallis or Benton County and prepared at a 2-foot (or less) contour interval may be used. However, for purposes of siting structures, floodplain location shall be determined through an elevation survey performed by an Oregon-registered Professional Land Surveyor or Oregon-Licensed Civil Engineer.

(C) **Map Correction.** Map corrections to the floodplain location shall be approved by the Planning Official to reflect a Letter of Map Amendment (LOMA) approved by the Federal Emergency Management Agency (FEMA).

[Ord 26, Ord 90-0069, Ord 92-0092, Ord 2005-0209, Ord 2009-0233 eff. 6/2/2011]

83.015 Definitions. For the purposes of this chapter, the following definitions apply:

(1) "1% Chance Floodplain" has the same meaning as "Special Flood Hazard Area." It means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The 1% Chance Floodplain is also referred to as the "100-Year Floodplain."

(2) "100-Year Floodplain" has the same meaning as "Special Flood Hazard Area". Note: Because the term "100-year floodplain" implies that a flood occurs only once every one

hundred years, rather than the true meaning of the term. The Federal Emergency Management Agency (FEMA) discourages the use of this term.

- (3) "Agricultural Structure" means a nonresidential structure customarily provided in conjunction with farm use for which all improvements contained within and attached to said structures are otherwise exempt from building code requirements in accordance with the Oregon State Speciality Code.
- (5) "Base Flood" – see definition listed in BCC 51.020.
- (6) "Base Flood Elevation (BFE)" – see definition listed in BCC 51.020.
- (7) "Basement" means any area of a building having its floor subgrade (below ground level) on all sides.
- (8) "Below-Grade Crawlspace" means an enclosed area below the base flood elevation and with an interior grade below the lowest adjacent exterior grade of the structure in which:
 - (a) The interior grade is not more than two feet below the lowest adjacent exterior grade; and
 - (b) The height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed four (4) feet at any point.
- (9) "Critical Facility" means a facility which, if impacted by flooding, could have significant negative impact on the greater community. Consequently, even a slight chance of such a facility flooding carries a high risk to the community. Critical facilities include, but are not limited to schools; nursing homes; hospitals; police, fire, and emergency response installations; and installations which produce, use, or store hazardous substance as defined in ORS 453.005 or hazardous waste as defined by the Oregon Department of Environmental Quality.
- (10) "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings, fences, or other structures; mining, dredging, filling, grading, paving, excavation or drilling operations; or storage of equipment or materials located within the special flood hazard area.
- (11) "Elevated Building" means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.
- (12) "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (a) The overflow of inland water; and/or
 - (b) The unusual and rapid accumulation of runoff of surface waters from any source.
- (13) "Flood Hazard" see definition listed in BCC 51.020.
- (14) "Flood Insurance Rate Map (FIRM)" means the official map, issued by the Federal Insurance Administration, delineating the areas of special flood hazard and/or the risk premium zones applicable to the community.
- (15) "Flood Insurance Study" means the official report provided by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, regulatory Floodway boundaries, and water surface elevations of the base flood.

- (16) "Floodplain" see definition listed in BCC 51.020.
- (17) "Flood Proofing" see definition listed in BCC 51.020.
- (18) "Floodway" see definition listed in BCC 51.020.
- (19) "Floodway Fringe" see definition listed in BCC 51.020.
- (20) "Flow-Through Design" means a structure that does not hinder or obstruct the movement of or displace surface floodwater. The typical underfloor venting required by BCC 83.220 does not constitute "flow-through design".
- (21) "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a structure's lowest floor, provided that the enclosed area is built and maintained in accordance with the applicable design requirements of this chapter, as specified in BCC 83.220.
- (22) "New Construction" means structures for which the "start of construction" commenced on or after July 31, 1987 (the effective date of this chapter) .
- (23) "Nonresidential structure" means any structure other than:
- (a) A dwelling; or
 - (b) A structure accessory to a dwelling.
- (24) "Recreational Vehicle" means a vehicle which is:
- (a) Built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) Designed to be self-propelled or permanently towable by a light duty truck; and
 - (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (25) "Shallow Flooding Area" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.
- (26) "Special Flood Hazard Area (SFHA)" means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. This area includes both the floodway fringe and the floodway and is commonly referred to as the "100-year floodplain". Designation of this area on Flood Insurance Rate Maps always includes the letter A.
- (27) "Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of

temporary forms. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of a building.

- (28) "Structure" means a building with a roof and two (2) or more rigid exterior walls, manufactured dwelling, or a gas or liquid storage tank that is principally above ground.
- (29) "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
- (30) "Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvements of a structure, the cost of which equals or exceeds fifty percent (50%) of its current market value either:
 - (a) Before the improvement or repair is started; or
 - (b) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

In determining "substantial improvement," the Planning Official may refer to the most recent version of the FEMA Desk Reference for Local Officials (FEMA-480).

"Substantial improvement" does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
 - (b) Any alteration of a structure listed on the National Register of Historic Places or the County Register of Historic Resources, provided that the alteration will not preclude the structure's continued designation as an Historic Structure.
- (31) "Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

[Ord 26, Ord 90-0069, Ord 2000-0157, Ord 2005-0209, Ord 2009-0233 eff. 6/2/2011]

83.100 Information to be Obtained and Maintained. The Planning Official shall perform the following duties relating to obtaining and maintaining flood-related information:

- (1) **Elevated Structures.** Where base flood elevation data are provided through the Flood Insurance Study, Flood Insurance Rate Maps, or required as in BCC 83.300(2), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basements and below-grade crawlspaces) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) **Floodproofed Structures.** For all new or substantially improved floodproofed structures where base flood elevation data are provided through the Flood Insurance Study, Flood Insurance Rate Maps, or as required in BCC 83.300(2):
 - (a) Verify and record the actual elevation (in relation to mean sea level), and

(b) Maintain the floodproofing certifications required in BCC 83.405.

(3) Maintain for public inspection all records pertaining to the provisions of this chapter.

[Ord 2009-0233 eff. 6/2/2011]

83.105 Interpretation of Floodplain Boundaries; Use of Other Data.

(1) If it is uncertain whether any proposed development described in BCC 83.110(1) is located in the floodplain (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), it shall be clearly demonstrated to the satisfaction of the County Engineer that the site in question is not subject to flood hazard.

(2) Where base flood elevation data have not been provided by FEMA, the applicant shall be responsible for providing to the County Engineer sufficient information either to determine the base flood elevation and floodway, if applicable, or to demonstrate the elevation of the development site will render it above the floodplain through comparison with nearby locations mapped as outside the floodplain.

(3) Any person contesting the location of the floodplain boundary shall be given a reasonable opportunity to appeal the interpretation by submission of a Letter of Map Amendment for the site in question approved by the Federal Emergency Management Agency.

[Ord 26, Ord 90-0069, Ord 2009-0233 eff. 6/2/2011]

83.110 Floodplain Development Permit Required.

(1) A floodplain development permit shall be obtained prior to construction of a new structure, substantial improvement to any structure, the placement of a manufactured dwelling, or the initiation of other land development activities including, but not limited to, fencing, mining, dredging, filling, grading, paving, excavation or drilling operations within the Special Flood Hazard Area established in BCC 83.010. Outside of the Corvallis Urban Growth Boundary, standard agricultural practices of a recurring character are exempt from the provisions of this chapter.

(2) An application for a permit shall be submitted on a form provided by the Planning Official with plans, engineering calculations, and other information determined to be necessary for the review of the application by the Planning Official and County Engineer.

(3) An application shall be reviewed by the Planning Official and County Engineer to determine:

(a) The applicability of provisions of this chapter.

(b) Compliance with provisions of this chapter.

(c) That the proposed development will not cause a significant negative effect on surrounding properties by changing the flow of flood waters or increasing flood elevations in the immediate vicinity.

(4) The County Engineer may require the design and installation of mitigative measures necessary to comply with BCC 83.110(3)(c).

(5) A permit shall not be issued until all necessary permits required by Federal or State law or County Ordinance have been secured. Alternatively, a permit may be issued with the condition that all necessary permits required by Federal or State law or County Ordinance will be secured prior to initiation of development activities approved by the permit.

- (6) Issuance or denial of a floodplain development permit that requires the exercise of discretion shall include notification of the decision pursuant to 51.625.

[Ord 26, Ord 90-0069, Ord 92-0092, Ord 2005-0209, Ord 2009-0233 eff. 6/2/2011]

83.205 Floodway Determination; Restrictions.

- (1) Except as provided for in subsection (4) of this section, the County Engineer shall determine whether any proposed development described in BCC 83.110(1) is located in a designated floodway as provided by BCC 83.010.
- (a) If the proposed development is located in a designated floodway, the applicant shall clearly demonstrate that all encroachments, including fill, new construction, substantial improvements, and other development within the floodway would not result in any increase in flood levels during the occurrence of the base flood discharge.
- (b) If the proposed development is located in a Special Flood Hazard Area where a floodway has not been designated as shown on the Flood Insurance Rate Map, the applicant shall clearly demonstrate that the cumulative effect of the proposed development shall not increase the water surface elevation of the base flood more than one (1) foot at any point.
- (2) The applicant shall derive base flood elevation data using the same or similar engineering methods used for "The Flood Insurance Study of Unincorporated Areas of Benton County, Oregon". The County Engineer and the Federal Emergency Management Agency may provide technical assistance. The applicant shall provide for certification by a licensed professional engineer or architect that the proposed development complies with provisions of this section.
- (3) Within a floodway in the Corvallis Urban Growth Boundary as described in BCC 83.010(3), structural improvements and the placement of fill, other than in a public benefit such as a public improvement project, shall not be permitted. For the purposes of this section, public improvement projects include, but are not limited to, the construction of bridges, roads, storm water detention facilities, and water dependent uses. Public improvement projects are allowed if the applicant demonstrates, through hydrologic and hydraulic analyses prepared by a registered professional engineer, that the permitted development will not result in any increase in flood levels during the occurrence of the base flood discharge.
- (4) Projects for stream habitat restoration may be permitted in the floodway provided:
- (a) The project qualifies for a Department of the Army, Portland District *Regional General Permit for Stream Habitat Restoration* (NWP-2007-1023); and,
- (b) A qualified professional (a Registered Professional Engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project; and,
- (c) No structures would be impacted by a potential rise in flood elevation; and,
- (d) An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.

[Ord 26, Ord 90-0069, Ord 92-0092, Ord 2005-0209, Ord 2009-0233 eff. 6/2/2011]

83.210 General Development Standards. Where allowed, all development in the Floodplain Management Overlay Zone shall comply with the following standards:

- (1) A Pre-Construction Elevation Certificate shall be required for all new construction, substantial improvements, and non-substantial improvements prior to issuance of a building permit in the Special Flood Hazard Area (SFHA). A Post-Construction Elevation Certificate shall be required prior to final inspection approval for all building permits where the Pre-Construction Elevation Certificate shows the building site to be within a SFHA and the lowest adjacent grade (LAG) to be at or below the base flood elevation (BFE).
 - (2) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - (3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage. Methods and practices that minimize flood damage shall be used.
 - (4) Except as in subsection (a) below, electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be elevated a minimum of one (1) foot above the base flood elevation, or shall be designed to prevent water from entering or accumulating within the components during conditions of flooding.
 - (a) Facilities serving a structure constructed prior to August 5, 1986, and not substantially improved since that date, may be installed at the same elevation as the top of the first habitable floor, or shall be designed to prevent water from entering or accumulating within the components during conditions of flooding. A basement shall not be considered a habitable floor.
- Note: It is still strongly recommended that all electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities be elevated a minimum of one (1) foot above the base flood elevation whenever possible.
- (5) All new and replacement water supply and sanitary sewer systems shall be designed to minimize or eliminate infiltration of flood waters and discharge into floodwaters.
 - (6) On-site wastewater treatment systems shall be located outside of floodplain on properties where land outside the floodplain is comparable to or better than land located within the floodplain with regard to soil conditions, topography, and unencumbered area in accordance with the Oregon Department of Environmental Quality rules.
 - (7) Storage or processing of materials in a manner that would be hazardous in a flood shall be prohibited.
 - (8) Fences and Walls. New and replacement fencing shall be designed to automatically collapse under conditions of the base flood or to automatically allow the passage of water by having flaps or openings in the areas at or below the Base Flood Elevation sufficient to allow flood water and associated debris to pass through freely.

Fences within the floodplain are encouraged to be wire-strand construction rather than woven-wire, welded-wire, or solid construction. Wire-strand construction reduces the potential for the fence to collect debris during a flood, redirect floodwaters, and/or be washed downstream.

- (9) AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.
- (10) Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, *Crawlspace Construction for Buildings Located in Special Flood Hazard Areas*, or successor document. (For more detailed information refer to FEMA Technical Bulletin 11-01.):
- (a) The building shall be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in subsection (b) below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as an Oregon registered professional engineer or architect. Other types of foundations are recommended for these areas.
 - (b) The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, shall have openings compliant with BCC 83.220 that equalize hydrostatic pressures by allowing the automatic, unrestricted entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.
 - (c) Portions of the building below the BFE shall be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.
 - (d) Any building utility systems within the crawlspace shall be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
 - (e) The interior grade of a crawlspace below the BFE shall not be more than two (2) feet below the lowest adjacent exterior grade.
 - (f) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall shall not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.
 - (g) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.
 - (h) If the velocity of floodwaters at the site will exceed five (5) feet per second, other foundation types shall be used.

[Ord 26, Ord 90-0069, Ord 2005-0209, Ord 2009-0233 eff. 6/2/2011]

83.215 Special Siting Standards for Dwellings, Manufactured Dwellings, and Recreational Vehicles. Where allowed, new and substantially improved dwellings and recreational vehicles in the Floodplain Management Overlay Zone shall comply with the general development standards set forth in subsections (1) through (4) below.

- (1) New dwellings, expansion of existing dwellings, and placement of manufactured dwellings are prohibited within the floodplain, with the following exceptions:
 - (a) If through an Administrative Review the Planning Official determines that there is insufficient buildable land outside the floodplain to allow reasonable development of the property, then a building site partially or fully within the floodplain may be allowed.
 - (A) In approving such a site preference shall be given to sites that:
 - (i) result in less fill and development within the floodplain;
 - (ii) are of higher elevation;
 - (iii) are farther from the top of bank of the adjacent water course
 - (iv) minimize the risk of structural damage from flooding; and
 - (v) preserve natural floodplain functions.
 - (B) In addition to the construction standards of this chapter, further conditions may be applied as deemed necessary by the Planning Official to minimize potential risks to the structure and potential impacts to other properties and the functioning of the floodplain.
 - (b) Replacement of an existing structure may be allowed, either:
 - (A) Within the building footprint of the structure being replaced;
 - (B) Up to a 10% expansion or shift of the building footprint of the structure being replaced; or
 - (C) Within the same square footage area elsewhere on the site, if through an Administrative Review the Planning Official determines that the relocation of the structure enhances stormwater and floodplain functions. The relocation shall be considered to enhance stormwater and floodplain functions if it furthers any of the following goals without worsening any other goal:
 - (i) Replaces standard construction with flow-through construction;
 - (ii) Moves the structure to a higher elevation;
 - (iii) Moves the structure further from the top of bank of the adjacent water course;
 - (iv) Reduces the amount of impervious surface area in the floodway fringe;
 - (v) Does not negatively impact non-noxious riparian vegetation. Noxious vegetation is identified in the Oregon Department of Agriculture's Oregon Weed Policy and Classification System (Appendix 1) or successor document, including weeds designated as "A," "B," and/or "T".
 - (c) Additions to existing structures may be allowed if the addition either:
 - (A) Falls below the threshold of "substantial improvement"; or
 - (B) Will not result in the filling of additional floodway fringe area (such as a second story addition or flow-through construction).

- (2) The lowest floor, including basement, of any new dwelling, or substantial improvement of a dwelling, or placement of a manufactured dwelling shall be elevated a minimum of 18 inches above the base flood elevation. In areas where a base flood elevation has not been established, applications for building permits shall be reviewed by the County Engineer to assure that proposed construction will be reasonably safe from flooding when considering historical data, high water marks, photographs of past flooding, etc., where available.
- (3) A manufactured dwelling shall be securely anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
- (4) A recreational vehicle placed within the A, A1-30, AH, and AE Flood Zones shall either:
 - (a) Be on the site for fewer than 180 consecutive days; or
 - (b) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached addition; or
 - (c) Meet the requirements for manufactured dwellings under subsections (1) through (3) of this section.

[Ord 26, Ord 90-0069, Ord 2000-0157, Ord 2005-0209, Ord 2009-0233 eff. 6/2/2011]

83.220 Enclosed Areas Below Dwellings and Manufactured Dwellings. Fully enclosed areas below the lowest floor of a dwelling or a manufactured dwelling in the Floodplain Management Overlay Zone are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by an Oregon registered professional engineer or architect or shall meet or exceed the following minimum standards:

- (1) A minimum of two flood-specific openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. Only that portion of an opening that is below the base flood elevation shall be included in the calculation. Underfloor vents as required to satisfy ventilation of crawlspace areas per applicable building code do not satisfy this standard;
- (2) The bottom of all openings shall be no higher than one (1) foot above grade; and
- (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. [Ord 26, Ord 90-0069, Ord 2009-0233 eff. 6/2/2011]

83.225 Special Siting Standards for Structures Accessory to a Dwelling, and Agricultural, Commercial, Industrial, and other Nonresidential Structures.

- (1) New or expanded commercial, industrial, and other nonresidential structures other than agricultural structures, are prohibited within the floodplain. If there is insufficient buildable land outside the floodplain to allow reasonable development of the property, a new or expanded primary structure may be authorized through the procedure specified in BCC 83.215(1)(a) through (c).
- (2) Agricultural structures and structures accessory to a dwelling shall be:
 - (a) Prohibited within the floodway; and

- (b) Allowed within the floodway fringe provided they comply with subsection (3).
- (3) Where allowed, new construction and substantial improvement of structures accessory to a dwelling and agricultural, commercial, industrial, and other nonresidential structures shall comply with BCC 83.210 and one of the following sets of standards, as applicable:
 - (a) For any such structure:
 - (A) The lowest floor, including basement, shall be elevated a minimum of 18 inches above the base flood elevation. In areas where a base flood elevation has not been established, applications for building permits shall be reviewed by the County Engineer to assure that proposed construction will be reasonably safe from flooding when considering historical data, high water marks, photographs of past flooding, etc., where available.
 - (B) Enclosed areas below such structures that are elevated shall comply with the requirements described in BCC 83.220.
 - (b) For any such structure, the structure:
 - (A) Complies with BCC 83.210;
 - (B) Is floodproofed so that the portion of the structure below the base flood elevation is watertight with walls substantially impermeable to the passage of water;
 - (C) Has structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - (D) Is certified by an Oregon registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans.
 - (c) For any structure exempt from building permit requirements, the structure:
 - (A) Shall not be used for human habitation and may be used solely for parking of vehicles or storage of items having low damage potential when submerged;
 - (B) Shall not contain toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality stored below BFE, unless confined in a tank installed in compliance with this ordinance;
 - (C) Complies with BCC 83.210;
 - (D) Has structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy as certified by an Oregon registered professional engineer; and
 - (E) Is designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters as provided by BCC 83.220.
 - (F) As a condition of approval, the owner shall sign the following declaratory statement to be recorded, along with a plot plan identifying the structure, in the County Deed Records for the parcel or lot upon which the building is constructed:

This property is situated within a flood hazard zone as shown on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency. The construction of a garage or other residential accessory structure to be used only for parking, access, or limited storage has been permitted by Benton County at an elevation below the base flood elevation for the site. Storage of hazardous chemicals, as defined in BCC 83.225(3)(c)(B), at an elevation below the base flood elevation within such structure is prohibited.

In consideration for not constructing the first floor of the structure above the base flood elevation, the owner agrees that the structure will be used exclusively for the purpose declared on the building permit, and that the structure will not be used for any other occupancy without obtaining the necessary building permits from Benton County to convert the occupancy. This agreement further serves as notice to the owner and successors in interest that contents of the structure are not insurable against flood loss except as provided by the insurer.

[Ord 92-0092, Ord 96-0118, Ord 2009-0233 eff. 6/2/2011]

[Ord 26, Ord 90-0069, Ord 2009-0233 eff. 6/2/2011]

83.240 Notice of Floodproofing Implications. An applicant choosing to floodproof a nonresidential building pursuant to BCC 83.225(3)(b) shall be notified in writing that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one (1) foot below that level). [Ord 26, Ord 90-0069]

83.300 Major Development Proposals.

- (1) Where the primary zone permits a subdivision, mobile home or manufactured dwelling park, or mobile home or manufactured dwelling subdivision, such use may be allowed in the Floodplain Management Overlay Zone if:
 - (a) Such use is consistent with the need to minimize flood damage;
 - (b) The applicant demonstrates that public utilities and facilities such as water supply, sewage disposal, natural gas and electrical systems are located and constructed to minimize flood damage; and
 - (c) The applicant demonstrates that adequate drainage has been provided to reduce exposure to flood damage.
- (2) Where base flood elevation data have not been provided by FEMA or are not available from another authoritative source, the applicant shall provide such data if the proposed subdivision or park equals or exceeds fifty (50) lots or parcels, or five (5) acres. Such data shall be derived using the same or similar engineering methods used in "The Flood Insurance Study for Benton County, Oregon and Incorporated Areas".
- (3) Subdivisions shall also be subject to the provisions of BCC 83.605.

[Ord 26, Ord 90-0069, Ord 2009-0233 eff. 6/2/2011]

83.310 Alteration or Relocation of a Watercourse.

- (1) The Planning Official shall notify adjacent communities and the Department of Land Conservation and Development of permit applications for alteration or relocation of a watercourse. The Planning Official shall submit evidence of such notification to FEMA.

The County shall stipulate maintenance requirements for the altered or relocated portion of any watercourse so that flood carrying capacity is not diminished as a condition of permit approval pursuant to BCC 83.110.

- (2) Within the Corvallis Urban Fringe, the following shall also apply. Water course alteration by artificial means is prohibited, with exceptions only for: emergency management purposes, or as mandated by State or Federal actions that supercede local authority, or to restore to its natural channel a stream whose course has been altered through human action. Prior to the alteration or relocation of a watercourse, the applicant for such authorization must notify the Oregon Department of State Lands (DSL) and submit copies of such notification to the Planning Official. The applicant shall submit certification provided by an Oregon-registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

[Ord 26, Ord 90-0069, Ord 2000-0157, Ord 2005-0209]

83.405 Records of Compliance. The County Building Official shall certify compliance with the provisions of this chapter.

- (1) The County Building Official shall obtain and record the actual elevation of the lowest habitable floor (including basement) of all new and substantially improved structures subject to this section and indicate whether the building contains a basement.
- (2) The County Building Official shall verify and record the actual elevation of all new and substantially improved floodproofed structures and obtain and maintain certifications required by BCC 83.220 and BCC 83.235(1).
- (3) The County Building Official shall maintain for public inspection all records pertaining to compliance with the provisions of this chapter.

[Ord 26, Ord 90-0069, Ord 2009-0233 eff. 6/2/2011]

83.505 Additional Standards in Corvallis Urban Fringe. In the Floodplain Management Overlay Zone within the Corvallis Urban Fringe, the following standards shall apply in addition to other applicable provisions of this chapter. In the case of conflict, the more restrictive standard shall apply. Developers of floodplain property are strongly encouraged to schedule a pre-application conference with the Community Development Department to review floodplain considerations.

- (1) In areas identified on the Benton County Zoning Map as Partial-Protection Floodplain, the following shall apply:
 - (a) Fill or construction in the floodplain shall be compensated for by removal of an equal amount of material from the floodplain on the same property. The purpose is to ensure that the available flood volume of the Special Flood Hazard Area (100-year floodplain) is not reduced. Volumetric exchange will not be required of buildings constructed with flow-through design. Areas of fill and excavation shall be designed to accommodate floodwater flows and shall not create barriers to the flow of floodwater. Proposals to alter topography in the floodplain must demonstrate that they will not result in alteration of hydrology or flow regimes that would cause erosion, unwanted ponding, or other problems.
- (2) In areas identified on the Benton County Zoning Map as High-Protection Floodplain, the following shall apply:

- (a) Removal of vegetation from the floodplain is prohibited, except for the following purposes:
 - (A) Removal of a hazard tree which poses an immediate threat to life or property. Tree removal shall comply with the following standards:
 - (i) The stump and root wad of any altered tree shall remain undisturbed in place;
 - (ii) Any tree removed is required to be replaced by like native species or alternate approved native species.
 - (B) Maintenance of lawns, planted vegetation, and landscaping, to the extent existing on October 6, 2005.
 - (C) Stream restoration and enhancement programs approved by the Oregon Department of Fish and Wildlife as improving riparian function, and wetland restoration and enhancement programs approved by Oregon Department of State Lands or the Oregon Department of Fish and Wildlife.
 - (D) Removal of non-native, invasive, and/or noxious vegetation, as identified in the Oregon Department of Agriculture's Oregon Weed Policy and Classification System (Appendix 1) or successor document, including weeds designated as "A", "B", and/or "T". As necessary to control erosion, areas of vegetation removal shall be re-vegetated with native species. If necessary to prevent erosion prior to new vegetation becoming established, short-term, non-structural erosion control measures shall be employed;
 - (E) Substitution of native plant species for non-native plants. Additionally, native plants may be planted without accompanying removal of non-native plants. All new plantings shall be species listed on the City of Corvallis Native Plant List as appropriate for the proposed location. Plantings being substituted for non-native plants shall be species identified on the Corvallis Native Plant List as being in the same ecological-function category as the replaced plants. Plantings shall be maintained to ensure they become established.
 - (F) For the development of water-related or water-dependent uses, provided they are designed and constructed to minimize impact on the floodplain;
 - (G) Removal of emergent in-channel vegetation likely to cause flooding events that result in structural damage;
 - (H) The minimum vegetation removal necessary to establish and maintain a fire fuel-break safety zone, as defined in BCC 88.010(2), surrounding a structure. Benton County encourages property owners to consult with the Oregon Department of Fish and Wildlife on ways to minimize the impact of this vegetation removal and to mitigate the impacts that do occur.
 - (I) Continuation of agricultural activities, limited to areas that have been converted to farm use prior to October 6, 2005. The property owner shall have the burden of proof in demonstrating that an area was converted prior to this date.
 - (J) The minimum vegetation removal necessary to establish a pedestrian trail located at least 10 feet inland from the top of bank.

- (K) Vegetation removal in conjunction with a development activity allowed under BCC 83.505(2).
 - (L) Commercial forestry operations authorized by the Oregon Department of Forestry.
 - (M) Vegetation removal within the area authorized under the provisions for a Modification to Natural Features Standards (BCC 88.800).
- (b) Building, Paving, and Grading Activities:
- (A) In the 0.2-ft. Floodway portion of the Floodplain Management Overlay Zone within the Corvallis Urban Fringe, no encroachments, including fill, new construction, substantial improvements, and other development are allowed, with the exception of bridges, infrastructure, utilities, or water dependent uses for which it may be demonstrated, through hydrologic and hydraulic analyses performed in accordance with standard engineering practices, that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge. Such exceptions shall also be designed and constructed to minimize adverse impacts to stormwater and floodplain functions within the floodway fringe, and comply with the mandatory construction standards in BCC 83.210. Development within the 0.2-ft. Floodway shall comply with all applicable State and Federal requirements.
 - (B) In the Floodway Fringe portion of the Floodplain Management Overlay Zone within the Corvallis Urban Fringe, the placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, is prohibited except as provided below. Such exceptions shall be designed and constructed to minimize adverse impacts to stormwater and floodplain functions within the floodway fringe, and comply with the mandatory construction standards in BCC 83.210.
 - (i) Replacement of an existing structure may be allowed pursuant to BCC 83.215(1)(b).
 - (ii) Additions to an existing structure may be allowed pursuant to BCC 83.215(1)(c).
 - (iii) Accessory structures and agricultural structures, provided they are of flow-through design and construction.
 - (iv) Grading and excavation that are standard agricultural practices of a reoccurring character, limited to areas that have been converted to farm use prior to October 6, 2005. The property owner shall have the burden of proof in demonstrating that an area was converted prior to this date.
 - (v) The following types of infrastructure, provided they are designed to minimize impacts to floodplain hydrologic and ecologic function:
 - (a) Construction of streets, roads, public utilities, bridges, and bicycle and pedestrian ways that are included in the City of Corvallis Transportation Plan, or in other adopted City infrastructure/utility plans.

- (b) Construction of streets, roads, bridges and bicycle and pedestrian ways necessary in order to maintain an acceptable functional classification of roadways adjacent to the property.
- (c) Driveways necessary to provide access to an approved building site, provided the minimum floodplain area is disturbed.
- (vi) Development of water-related and water-dependent uses;
- (vii) Erosion control or flood control measures that have been approved by the Oregon Department of State Lands (DSL) and/or the U.S. Army Corps of Engineers, and that utilize bio-engineering methods. Streambank hardening (installation of hard-surfaced erosion- or flood-protection structures such as rip-rap) is prohibited except where necessary to address an imminent hazard to a structure built prior to October 6, 2005. Where allowed, hard-surface measures shall be designed by a Professional Engineer licensed by the State of Oregon and shall be approved by the Oregon Department of State Lands or U.S. Army Corps of Engineers, and shall at a minimum, require backfilling with soil and planting with native vegetation;
- (viii) Development authorized under the provisions for Modification to Natural Features Standards (BCC 88.800).

[Ord 2005-0209, Ord 2009-0233 eff. 6/2/2011]

83.605 Parcels and Lots. Parcels or lots resulting from subdivisions, partitions and property line adjustments of land in the Floodplain Management Overlay Zone shall comply with the requirements of this section.

- (1) Parcels and lots shall be designed such that existing and future uses and development activities allowed by the underlying zone can be carried out in conformance with the regulations contained in this chapter. Creation of lots or parcels that do not meet this requirement is prohibited, with the exception of lots or parcels created for public park or open space purposes.
- (2) For each lot or parcel, other than those designated for non-residential use, open space use or designated as otherwise unbuildable, the applicant shall demonstrate that:
 - (a) Suitable and adequate land exists outside the floodplain for siting of the primary structure; and
 - (b) Access by standard emergency vehicles such as fire apparatus and ambulance from the public road to the building site will not be prevented by flood waters during the base flood. This determination shall be based upon input from the fire protection district serving the site. A floodplain development permit is required for demonstrating that an elevated access road will comply with the provisions of this chapter.
- (3) Site feasibility approval areas for on-site wastewater treatment systems shall be located outside of the floodplain if land outside the floodplain on the proposed lot or parcel is comparable to or better than land located within the floodplain with regard to soil conditions, topography, and unencumbered area in accordance with the Oregon Department of Environmental Quality rules

[Ord 2005-0209, Ord 2009-0233 eff. 6/2/2011]

83.700 Critical Facilities. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

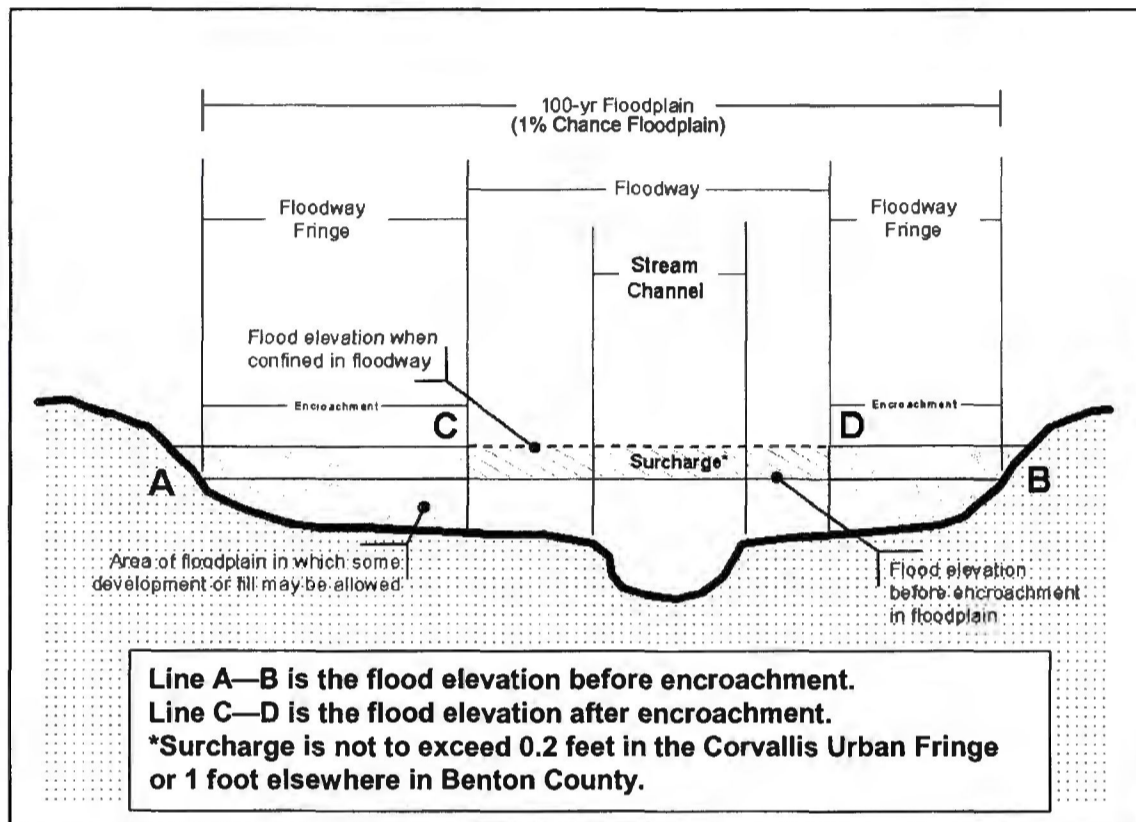
[Ord 2009-0233 eff. 6/2/2011]

83.800 Variance Procedure.

- (1) Procedure. A variance to the requirements of this chapter may be granted pursuant to the standard variance procedure specified Chapter 53 and the provisions of this section.
- (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the procedures set forth in this section, provided that the alteration will not preclude the structure's continued designation as an Historic Structure.
- (3) Criteria. A variance may be approved only upon the applicant demonstrating that the following criteria in addition to the standard variance criteria of BCC 53.410 are met.
 - (a) Granting of the variance shall not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
 - (b) In considering a variance application, the Planning Official shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
 - (A) The danger that materials may be swept onto other lands to the injury of others;
 - (B) The danger to life and property due to flooding or erosion damage;
 - (C) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (D) The importance of the services provided by the proposed facility to the community;
 - (E) The necessity to the facility of a waterfront location, where applicable;
 - (F) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (G) The compatibility of the proposed use with existing and anticipated development;
 - (H) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (I) The safety of access to the property in times of flood for ordinary and emergency vehicles;

- (J) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - (K) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (4) Conditions of Approval.
- (a) Upon consideration of the factors of subsections (2) and (3) of this section and the purposes of this chapter, the Planning Official may attach such conditions to the granting of a variance as deemed necessary to further the purposes of this ordinance.
 - (b) Any applicant to whom a variance from the elevation standard is granted shall be given written notice that:
 - (A) The structure will be permitted to be built with a lowest floor elevation below the base flood elevation;
 - (B) The cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation
 - (C) Increased premium rates for flood insurance can be as high as \$25 for \$100 of insurance coverage; and
 - (D) Construction below the base flood level increases risks to life and property.
- (5) Records. The Community Development Department shall maintain the records of all variance requests and report any variance approvals to the Federal Insurance Administration upon request.

[Ord 2009-0233 eff. 6/2/2011]



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)(b), 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) Maintains compliance with the floodplain requirements of BCC 83.605.
- (6) A property line adjustment involving an existing property that is nonconforming to the standards referenced in subsections (3), (4), and/or (5) of this section may be approved if the property line adjustment will not increase the degree of the nonconformity.

[Ord 2009-0233 eff. 6/2/2011]

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.

Chapter 95

Partitions

95.005 Scope. All partitions shall be subject to the provisions of this chapter. Partitions within the Corvallis Urban Growth Boundary shall also be reviewed pursuant to the Planned Unit Development standards contained in BCC Chapter 100. For the purposes of this chapter, "road" means a public or private way that is created to provide ingress or egress for persons to two or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining, or agricultural purposes. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 98-0141]

95.010 Deed Release. (1) The Planning Official may grant the owner or contract purchaser of land an exemption to the provisions of this chapter in order to secure financing for a portion of a parcel or lot.

(2) A division of land resulting from lien foreclosure shall be exempt from the provisions of this chapter.

(3) The applicant shall sign and submit for recording in the County Deed Records for the subject property a deed covenant containing the following statement in acknowledgement of the provisions of this section:

The Owner(s) or Contract Purchaser(s) agree to treat the land described herein as a single unit, notwithstanding the fact that portions may be given a separate tax account. Sale of any portion of the property without prior approval by Benton County of a land partition will be a violation of the Benton County Code, except that a division of land resulting from lien foreclosure shall be exempt from the provisions of the Benton County Code. [Ord 93-0097, Ord 96-0118]

95.050 Replatting. A replat of a recorded partition plat shall be reviewed as a new request for a partition and shall be subject to all provisions of this chapter. When a utility easement is proposed to be realigned, reduced in width or omitted by a replat, all affected utility companies or public agencies shall be notified consistent with BCC 51.605 to 51.615. [Ord 92-0092]

APPLICATIONS

95.105 Approval Process. The applicant is advised to consult with the Development Department staff prior to compiling necessary information for the preparation and submission of an application. Completion of a partition is accomplished through a two step review resulting in preliminary and final approvals. For purposes of appeal, a decision issuing or denying a preliminary approval may be appealed on the issues of compliance with the criteria in BCC 95.120. Final approval is a final decision for purposes of appeal on the issue of whether the applicant has complied with the conditions of approval imposed at preliminary approval. [Ord 90-0069, Ord 92-0092]

95.110 Preliminary Series Partition Plat. (1) A landowner may partition a parent parcel into three parcels or lots through the provisions of this chapter. A landowner proposing to further partition the parent parcel into a fourth or subsequent parcel or lot shall first obtain approval of a preliminary series partition plat if the remaining acreage in the parent parcel exceeds three times the minimum parcel or lot size.

(2) The application for a preliminary series partition plat shall contain a partition plan showing the boundaries, acreage and frontage of any future parcels or lots, the location and width of future road rights-of-way, and existing structures, driveways, wells, septic systems and drainage ways on the subject parcel or lot. The application shall also demonstrate compliance with BCC 99.840 through 99.850.

(3) Approval of a preliminary series partition plat is granted by the Planning Commission based on findings that each parcel or lot in the plan will comply with the standards set forth in BCC 95.120.

(4) The Planning Commission may impose conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the proposed partitioning, or to otherwise ensure compliance with the purpose and provisions of this code. On-site and off-site conditions may be imposed. An applicant may be required to post a bond or other guarantee pursuant to BCC 99.905 to 99.920 to ensure compliance with a condition of approval.

(5) Land in an approved preliminary series partition plat may be partitioned pursuant to BCC Chapters 95 or 96 without further Planning Commission approval, provided the proposed partition does not deviate by more than ten percent (10%) from approved parcel or lot size or dimensions. A plat modification which exceeds this standard but otherwise substantially conforms to the approved preliminary series partition plat may be approved by the Planning Official, subject to notice requirements pursuant to BCC 51.605 to 51.625. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2007-0223, Ord 2007-0224]

95.115 Applications for a Partition. An application for a partition shall be accompanied by:

(1) A sketch which illustrates the proposed partition. A survey is not required for the preparation of the sketch. The sketch shall show:

(a) The entire boundary of the parent parcel and the boundaries of each proposed parcel or lot;

(b) The acreage of each proposed parcel or lot;

(c) The amount of frontage of each proposed parcel or lot on an adjacent public road or street or on an existing private road or street;

(d) The location of any improvements, including buildings, driveways, wells and septic systems and the setbacks of existing buildings and septic systems to proposed property lines; and

(e) The location of any existing private road that will provide access to the proposed parcels or lots. If information is available, describe the location, grade, depth and composition of the road base, and the width of both the all weather surface and the base.

(2) A plan and profile of the proposed road if a road will be constructed to provide access to a proposed parcel or lot. The plan shall be accompanied by a topographic survey or contour map at two foot intervals if less than a fifteen percent (15%) slope (otherwise at five foot intervals).

(3) Documentation required by BCC 99.840 through 99.850. [Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2007-0223, Ord 2007-0224]

95.120 Preliminary Approval. Preliminary approval is granted by the approving authority based on findings that the proposed partition complies with:

- (1) The criteria for creation of new parcels or lots of the zone in which the proposed parcels or lots are located;
- (2) The floodplain requirements of BCC 83.605;
- (3) Requirements for consideration of sensitive land conditions of BCC 99.105 to 99.110;
- (4) The parcel or lot design criteria of BCC 99.305 to 99.315;
- (5) The access or frontage standards of BCC 99.405 to 99.420; and
- (6) The water supply standards of BCC 99.840 to 99.850.

[Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2007-0223, Ord 2007-0224, Ord 2009-0233 eff. 6/2/2011]

95.125 Conditions of Approval. The following conditions shall be imposed at the time of preliminary approval and must be met prior to issuance of final approval:

- (1) An Oregon licensed land surveyor shall survey and monument the parcels or lots, except that:
 - (a) A parcel or lot in a resource zone which exceeds ten (10) acres need not be surveyed or monumented.
 - (b) A parcel or lot in a non-resource zone which exceeds ten (10) acres or two and one-half times the minimum parcel or lot size, whichever is greater, need not be surveyed or monumented.
 - (c) Notwithstanding BCC 95.125(1)(b), the Planning Official may require that all parcels and lots created by a partition be surveyed and monumented if the County Surveyor recommends that due to errors and discrepancies of previous surveys, a complete survey is in the best interest of the owners of the subject and adjoining parcels or lots, or if series partitions of the parent parcel necessitates a complete boundary survey to assure the planned development of the property.
- (2) A partition plat shall be prepared by an Oregon licensed land surveyor in accordance with ORS Chapter 92 and County Surveyor Plat Standards. The surveyor shall submit the original plat and a true reproducible of the plat, and the filing fee to the County Surveyor.
- (3) The applicant shall comply with the requirements of BCC 99.505 to 99.960 for roads, sewage disposal, water supply, and fire protection.
- (4) All taxes, interest and penalties shall be paid in the manner prescribed for subdivision plats pursuant to ORS 92.095.
- (5) The approving authority may impose any other conditions required by a specific section of this code or by State law. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118]

95.130 Effective Period of Preliminary Approval. (1) The preliminary approval shall be effective for a period of one (1) year from the date of decision, after which time the approval automatically expires.

(2) The approving authority may extend the preliminary approval for one additional six (6) month period. The applicant shall submit a written request for extension to the Planning Official prior to expiration of the preliminary approval, stating reasons why the initial deadline was not met, and provide evidence that all conditions of approval will be completed within the extension period. [Ord 90-0069]

95.150 Final Approval. (1) Final approval is granted by the Planning Official based upon findings that the applicant has complied with all the conditions imposed in the preliminary approval. Final approval completes the land partition.

(2) To obtain final approval the applicant shall submit one set of documents demonstrating compliance with the conditions of approval.

(3) The landowner(s) or contract purchaser(s) shall acknowledge a documented recorded ownership interest in the parcel or lot by signing the partition plat. The signature shall be notarized.

(4) The Planning Official shall provide for signature of the plat by the Assessor and Tax Collector, or their designee(s), signifying payment of taxes, interest or penalties pursuant to ORS 92.095.

(5) The Planning Official shall signify final approval of the partition by signing the partition plat.

(6) The County Surveyor shall signify compliance with plat standards by signing the partition plat.

(7) All improvements to be dedicated to the public shall be installed to the satisfaction of the County Engineer prior to final approval of the partition. In lieu of complete installation of public improvements, an improvement agreement and performance guarantee may be submitted pursuant to BCC 99.905 to 99.920.

(8) The Board of Commissioners shall signify acceptance of any right-of-way dedication by signing the partition plat.

(9) The County Surveyor shall record the plat with the Benton County Records and Elections Office.

(10) The Assessor shall assign a new tax account to each parcel or lot in an approved partition plat. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118]

Chapter 97

Subdivisions

97.005 Scope. A subdivision is a division of land into four or more parcels or lots within a calendar year. All subdivisions shall be subject to the provisions of this chapter. Subdivisions within the Corvallis Urban Growth Boundary shall also be reviewed pursuant to the Planned Unit Development standards contained in BCC Chapter 100. [Ord 7, Ord 90-0069, Ord 98-0141]

97.050 Replatting. A replat of a recorded subdivision plat shall be reviewed as a new request for a subdivision and shall be subject to all provisions of this chapter. When a utility easement is proposed to be realigned, reduced in width or omitted by a replat, all affected utility companies or public agencies shall be notified consistent with BCC 51.605 to 51.615. [Ord 92-0092]

APPLICATION

97.105 Letter of Intent to Subdivide. The applicant shall inform the Planning Official in writing of the intention to apply for a subdivision, and request a pre-application conference. A sketch plan and narrative must accompany the letter of intention with sufficient detail to outline the development plan. [Ord 7, Ord 90-0069].

97.110 Pre-Application Conference. The Planning Official shall schedule a pre-application conference with the applicant within twenty-one (21) days following receipt of the letter of intention. Representatives of public and private agencies may attend or may submit such information and recommendations that will assist the applicant in preparing the tentative subdivision plat. The applicant or the Planning Official may request additional meetings. [Ord 7, Ord 90-0069]

97.115 Application. (1) A complete application for a subdivision shall include fifteen copies of a preliminary plat that conforms to map standards established by the County Surveyor and ORS Chapter 92. A preliminary plat shall illustrate:

- (a) Parcel, lot, and road design consistent with the Development Code.
- (b) Location, names, width, elevation and grades of existing and proposed streets in, or adjacent to, the proposed subdivision.
- (c) Contour lines at two foot intervals unless otherwise approved by the County Engineer. Five foot contour lines may be used in areas of greater than fifteen (15) percent slope or if the tract is divided into parcels or lots of five (5) acres or more. The source and accuracy of contour shall be specified.
- (d) The location of at least one temporary benchmark within the boundaries of the proposed subdivision.
- (e) The location of all areas subject to the base flood as shown on the Flood Boundary and Floodway Map on file in the office of the Community Development Department.
- (f) Soils using USDA Soil Conservation Service information or field studies prepared from specific site data.

- (g) The proposed parcel or lot lines, approximate dimensions and lot and block numbers.
 - (h) Proposed phases or additions for the completion of public improvements and the filing of final plats.
 - (i) The location, width and purpose of all easements.
 - (j) The location of all utilities including water, sewer, power, telephone, natural gas and cable television.
 - (k) The proposed plan for stormwater drainage including any off-site improvements.
 - (l) The location and purpose of all common or public facilities.
 - (m) The proposed subdivision name, and the name, address, and phone number of the applicant and all representatives responsible for the plan.
 - (n) A vicinity map showing the boundary of the parent parcel, intersecting property lines, adjacent streets, sewers, water lines and ownerships abutting the boundary of the parent parcel as found in the County Assessor's records.
- (2) An application shall further include a narrative that provides the following information.
- (a) A phased development schedule.
 - (b) A schedule for construction of all improvements.
 - (c) The proposed method for providing water supply for each parcel or lot and documentation required to demonstrate compliance with BCC 99.840 to 99.850.
 - (d) The proposed method for providing sewage disposal for each parcel or lot.
 - (e) Description of the impact of the proposed subdivision on water, sewer, fire protection, law enforcement, schools, hospitals, solid waste disposal and other services.
 - (f) Description of all community facilities or systems including a maintenance program for such systems.
 - (g) A copy of tentative covenants, conditions and restrictions, if any, proposed by the applicant.

(3) The applicant shall submit two copies of the tentative plat and the appropriate fee to the County Surveyor. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2007-0223, Ord 2007-0224, Ord 2009-0233 eff. 6/2/2011]

97.120 Design Standards. A subdivision shall be designed to comply with the land development standards contained in BCC Chapters 83 and 99. In addition, the minimum width for utility easements shall be:

- (1) Ten (10) feet when abutting a rear property line.
- (2) Sixteen (16) feet when centered on a rear property line, resulting in eight (8) feet on either side of the property line.

(3) Five (5) feet along prescribed side property lines as authorized by the County Engineer. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2009-0233 eff. 6/2/2011]

PRELIMINARY APPROVAL

97.205 Notice of Pending Action. After receiving a complete application, the Planning Official shall schedule a public hearing and issue public notice for the purpose of reviewing the subdivision's preliminary plat. The Planning Official shall coordinate review of the preliminary plat with all affected city, county, state and federal agencies and all affected special districts. [Ord 90-0069]

97.210 Approval of Preliminary Plat. The Planning Commission shall review all preliminary plat documents and conduct a public hearing for the purpose of reviewing the proposed subdivision. The Planning Commission shall consider the provisions of the Development Code, and approve, approve with modifications or conditions, or deny the proposal. The decision shall be based upon findings justifying the decision. Approval of the tentative plat shall be a final decision for the purpose of appeal on the issue of compliance with BCC Chapter 99. [Ord 90-0069, Ord 92-0092]

97.215 Public Improvements. The Planning Commission may require that all public improvements be installed and dedicated prior to final plat approval or a bond shall be required ensuring completion pursuant to BCC 99.905 to 99.920. The amount of the bond shall be established by the County Engineer. The bond shall be submitted by the applicant prior to final plat approval. [Ord 90-0069]

97.305 Effective Period. Unless a phasing schedule is approved by the Planning Commission, a tentative plat shall be effective for a period of twelve (12) months from the date of decision, after which time the approval automatically expires. [Ord 7, Ord 90-0069]

97.310 Extension of Effective Period. (1) The Planning Official may grant one extension of six (6) months for submitting the final plat and documents. The applicant shall submit the request for extension in writing to the Planning Official prior to expiration of the effective period and shall provide evidence that the plat and documents will be completed within 18 months of the tentative plat approval.

(2) The Planning Commission may grant one extension of twelve (12) months for submitting the final plat and documents. The applicant shall submit the request for extension in writing to the Planning Official prior to the expiration date of the effective period. The applicant shall submit evidence that the plat and documents will be completed within twenty-four (24) months of the tentative plat approval. [Ord 7, Ord 90-0069]

FINAL PLAT REVIEW

97.405 Final Plat Submittal. The applicant shall submit two sets of prints and all accompanying documents to the Planning Official prior to expiration of the tentative plat. The original of the final plat shall be filed with the County Surveyor. The plat and documents shall contain all modifications required as conditions of approval. The final plat submittal shall include the following items:

(1) A final plat map that complies with map standards established by the County Surveyor and ORS Chapter 92. Such plat shall illustrate or include:

(a) All existing and proposed easement lines. The description of each easement shall include the purpose, width, length and bearing, and sufficient ties to locate the easement with respect

to the subdivision lines. If an easement is not definitely located, a statement of the easements shall be given. If the easement has been recorded, the recording reference shall be listed.

(b) The land to be dedicated for any purpose, public or private, as distinguished from parcels or lots intended for sale.

(c) A certificate signed and acknowledged by all parties having any recorded title interest in the land (except lienholders) consenting to the preparation and recording of the final plat.

(d) Certificates for signatures of approval by the Chairman of the Planning Commission, County Engineer, Assessor, Tax Collector, County Surveyor and the Board of Commissioners.

(e) Other certifications required by State law.

(2) Drawings and calculations which illustrate or include:

(a) Traverse data including the coordinates of the boundary of the subdivision and ties to section corners and donation land claim corners, and showing the error of closure.

(b) The computation of all distances, angles, and courses shown on the final plat.

(c) Ties to monuments, adjacent subdivisions, and street corners.

(3) Evidence of adequate quality and quantity of water to each parcel or lot.

(4) Evidence of adequate sewage disposal for each parcel or lot.

(5) A copy of any final covenants, conditions, and restrictions applicable to the subdivision, to be recorded with the final plat.

(6) Documents dedicating all roads, pedestrian ways, drainage channels, easements, and other public rights-of-way.

(7) Plans, specifications and supporting documents for improvements of lands dedicated for roads, pedestrian ways, drainage channels, easements, and other public rights-of-way.

(8) The applicant shall pay engineering review fee. [Ord 7, Ord 90-0069, Ord 92-0092]

97.410 Staff Review of the Final Plat. The Planning Official, Engineer, and County Surveyor shall concurrently review the final plat for conformity with the approved tentative plat and State law.

(1) If the Planning Official, County Engineer or County Surveyor determine that the final plat and documents do not conform to the approved tentative plat and State law, the applicant shall be afforded the opportunity to make corrections. The corrections shall be completed within three (3) months following expiration of the tentative plat approval.

(2) Minor changes from the tentative plat may be authorized by the Planning Official provided that such changes are required by engineering or other circumstances unforeseen at the time the tentative plat was approved. All changes must be consistent with the provisions of the Development Code. If other revisions are made to the subdivision plan, and the Planning Official finds that such revisions differ significantly from the approved tentative plat, the final plat shall be denied. [Ord 90-0069]

97.415 Final Plat Signatures. Once staff review and approval has occurred, the County Surveyor shall forward the final plat to the Planning Commission Chairman, County Engineer, Assessor, Tax Collector, County Surveyor and special district board chairman, if applicable, for signature. [Ord 7, Ord 90-0069]

97.420 Final Plat Approval by the Board. The County Surveyor shall submit the signed final plat to the Board of Commissioners for final approval. The Board of Commissioners shall grant final approval by signing and dating the final subdivision plat. Approval of the final plat shall be a final decision of the issue of compliance with BCC 97.405 to 97.410. [Ord 90-0069]

97.505 Filing the Final Plat. The County Surveyor shall file and record the final subdivision plat and record the Notice of Final Approval with the County Records and Elections Office. The applicant shall be responsible for the recording fees. Prior to recording a Notice of Final Approval, the application shall submit a Statement of Water Rights that has been completed by the applicant, and signed by the Oregon Water Resources Department if a water right is appurtenant to the land. [Ord 90-0069]

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DEPARTMENT OF LAND CONSERVATION & DEV.
635 CAPITOL ST NE STE 150
SALEM OR 97301-2540

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