



Oregon

Theodore R. Kubongski, 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

12/9/2009

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 002-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, December 22, 2009

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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Kristin Anderson, Benton County  
Gloria Gardiner, DLCD Urban Planning Specialist  
Katherine Daniels, DLCD Farm/Forest Specialist

Ed Moore, DLCD Regional Representative

<paa> YA

FORM 2

# DLCD

## Notice of Adoption

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

In person  electronic  mailed

DATE  
STAMP

**DEPT OF**  
**DEC 02 2009**  
**LAND CONSERVATION  
AND DEVELOPMENT**  
For DLCD Use Only

Jurisdiction: **Benton County**

Local file number: **LU-08-075**

Date of Adoption: **11/24/2009**

Date Mailed: **11/30/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **5/22/09**

- |   |   |
|---|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment        | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment             |
| <input type="checkbox"/> New Land Use Regulation                  | <input type="checkbox"/> Other:                           |

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

**Revised Benton County's Development Code to be in compliance with changes the Oregon State Legislature made to Oregon Administrative Rules (OAR) and/or Oregon Revised Statutes (ORS). Chapters changed; Ch. 51 "Development Code Administration," Ch. 55 "Exclusive Farm Use," Ch. 60 "Forest Conservation," Ch. 94 "Property Line Adjustments," and Ch. 97 "Subdivisions."**

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

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

to:

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

to:

Location: **County-wide**

Acres Involved: **Not Calc.**

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

New: **N/A**

Applicable statewide planning goals:

- |                          |                          |                                     |                                     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                 | <b>2</b>                 | <b>3</b>                            | <b>4</b>                            | <b>5</b>                 | <b>6</b>                 | <b>7</b>                 | <b>8</b>                 | <b>9</b>                 | <b>10</b>                | <b>11</b>                | <b>12</b>                | <b>13</b>                | <b>14</b>                | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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. 002-09 (17592) [15870]

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**DLCD file No.** \_\_\_\_\_

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

Benton County.

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Local Contact: **Kristin Anderson**

Phone: (541) 766-6298 Extension:

Address: **360 SW Avery Ave.**

Fax Number: **541-766-6891**

City: **Corvallis** Zip: **97333-1139**

E-mail Address:

**kristin.anderson@co.benton.or.us**

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### ADOPTION SUBMITTAL REQUIREMENTS

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

- one* ↓
1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

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

- This is confusing. Can it be rewritten?*
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**. *pdf?*
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **[larry.french@state.or.us](mailto:larry.french@state.or.us)** - **Attention: Plan Amendment Specialist**.

Updated March 17, 2009



**PART III.** The Development Code amendments proposed in Planning File No. LU-08-075 are hereby approved, based on the Findings and Conclusions contained in the attached "Exhibit I" and hereby adopted and incorporated herein.

**PART IV.** Benton County Development Code is hereby amended as shown in "Exhibit 2."

**PART V.** The effective date for these amendments to the Benton County Development Code will be:

First Reading: November 3, 2009

Second Reading: November 24, 2009

Effective Date: December 29, 2009

**BENTON COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

Approved as to Form:

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Recording Secretary

## **Exhibit 1**

### **Findings of Fact and Conclusions of Law** **Development Code Amendments; File No. LU-08-075**

#### **A. GENERAL FINDINGS**

The Development Code has existed in its current form, with incremental amendments, since 1990. The proposed amendments are not substantial changes to land use rules or procedures, but rather modifications that either have minor impact or are required by changes to Oregon statute and/or administrative rules. Some “housekeeping” amendments are proposed. These will maintain consistency between different sections of code, fix typos and outdated information, and communicate more clearly.

#### **B. PROPOSED AMENDMENTS**

The following is a summary of the amendments.

##### **Chapter 51 Development Code Administration:**

- Amendment to the process and time line for considering an application “complete” and taking final action.
- Other minor changes for consistency and clarity.

##### **Chapter 53 General Review Criteria and Procedures:**

- Amend the nonconforming use section to include the requirements for expanding the “non-conforming use” of a school in the Exclusive Farm Use Zone.

##### **Chapter 55 Exclusive Farm Use Zone:**

- Numerous updates to comply with changes to state statutes and rules made by the 2007 and 2009 Legislatures, and by the Land Conservation and Development Commission. These are noted in the draft text. Mainly schools, solid waste sites, greyhound facilities, model aircraft sites, golf courses, biofuel, and assistance by farmworkers.
- Other minor changes for clarity and for correction of incorrect references.

##### **Chapter 60 Forest Conservation Zone:**

- Numerous updates to comply with changes to state statutes and rules made by the 2007 Legislature and by the Land Conservation and Development Commission. These are noted in the draft text.
- Reference new sources of information and authority for determining “cubic feet per acre per year.”
- Add text regarding the purpose and potential hazards of the Forest Conservation Zone to the covenant required for dwellings and conditional use permits.
- Amendment allowing creation of parcels smaller than the minimum parcel size for public parks, public open space, or non-profit land conservation organization.

- Clarify intent of siting standards for buildings.
- Other minor changes for clarity and for correction of incorrect references.

**Chapter 94 Property Line Adjustments:**

- Amendments prohibiting using the same land twice to qualify for an extra dwelling right and prohibiting dwelling rights from land transfers that reduce the size of granting parcels to less than the minimum parcel size, if the granting parcel already had one dwelling right.
- Other minor changes for clarity.

**Chapter 97 Subdivisions:**

- Deletion of the outdated Community Development Department address.
- Deletion of the “water rights” language that has not been required on subdivision plats since 1996.
- Other minor changes for clarity.

**C. FINDINGS APPLYING CODE CRITERIA**

**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 the text.***

**Findings:** The proposed code amendments prompted by changes to state law are in response to “changing policies and conditions.” Other amendments are to correct or clarify text.

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

***BCC 53.610(1)-The Board of County Commissioners may initiate an amendment to this code. The Board shall direct the Planning Official to prepare a background report discussing the justification for the proposed text amendment.***

**Findings:** The Board of Commissioners directed the Planning Official to initiate these code amendments. A report with annotations to proposed code amendments was presented to the Board of Commissioners prior to their work session. That report discussed justifications for the proposed 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 hearing, the Planning Commission shall make a recommendation to the Board to approve, deny, or modify the proposed text amendment.***

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

**Findings:** The Planning Commission conducted a hearing on September 1, 2009, and voted unanimously to recommend approval, with modifications, to the Board of Commissioners. The Board of Commissioners conducted a public hearing on November 3, 2009, and considered the text amendment and the recommendation of the Planning Commission.

**Conclusion:** The conduct of the hearings complied with the procedure stipulated here.

#### **D. SUMMARY AND CONCLUSION**

**The Board of Commissioners concludes that the proposed amendments comply with state administrative rules and the Benton County Development Code.**



**Exhibit 2**

**Amendments to the Benton County Development Code**

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

## Chapter 51 Development Code Administration

\* \* \*

### APPLICATION AND FEES

\* \* \*

**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 specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days. The time period does not apply to an appeal of a decision of the Board of Commissioners, or to a text amendment.

(2) ~~(a) The Planning Official shall determine whether an application is complete within thirty (30) days from the date of the filing of an application and shall in writing notify the applicant of exactly what information is missing within 30 days of the date of the filing of an application. 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.~~

~~(b) 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 31<sup>st</sup> 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. The application shall be deemed complete for the purpose of BCC 51.535(1) upon the Planning Official's receipt of:~~

~~(A) All of the missing information;~~

~~(B) Some of the missing information and written notice from the applicant that no other information will be provided; or~~

~~(C) Written notice from the applicant that none of the missing information will be provided.~~

~~(c) On the 181<sup>st</sup> day after first being submitted, the application is void if the applicant has been notified of the missing information and has not submitted the information specified in subsection (2)(b)(A), (2)(b)(B) or (2)(b)(C) of this section.~~

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## NOTICE REQUIREMENTS

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

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

\* \* \*

**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~~ 14 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:

\* \* \*

**Chapter 53**  
**General Review Criteria and Procedures**

\*\*\*

**NONCONFORMING USES**

\*\*\*

**53.317 Public or private schools in the Exclusive Farm Use Zone.**

(1) Public or private schools legally existing prior to January 1, 2010 may be continued, altered, restored, or replaced subject to the requirements of BCC 53.305 - 53.340.

(2) Public or private schools legally existing prior to January 1, 2010 may be expanded subject to the requirements of BCC 53.305 - 53.340 and provided that:

(a) The use was established on or before January 1, 2009;

(b) The requirements of BCC 53.215, 53.220, 55.205, and 55.215 are met; and

(c) The expansion occurs on:

(D) The lot or parcel on which the use was established on or before January 1, 2009; or

(E) A lot or parcel that is contiguous to the lot or parcel described in (D) above and that was owned by the applicant on January 1, 2009.

\*\*\*

**Chapter 55**  
**Exclusive Farm Use Zone (EFU)**

\* \* \*

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

\* \* \*

(8) Creation of, restoration of, or enhancement of wetlands.

\* \* \*

~~(10) The breeding, kenneling and training of greyhounds for racing. This use is not allowed on high value farmland.~~

(10) Processing of farm crops into biofuel, as defined by ORS 315.141, if:

(a) Only the crops of the landowner are being processed;

(b) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

(c) The landowner is custom-processing crops from other landowners in the area into biofuel for their use or sale.

\* \* \*

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

~~(17) Implementation of a wildlife habitat conservation and management plan approved by the Oregon Department of Fish and Wildlife pursuant to ORS 308A.403 through 308A.430.~~

~~(17) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a County Register as historic property as defined in ORS 358.480. In order to meet the requirements specified in the statute, a historic dwelling must be listed on the National Register of Historic Places and the Benton County Register of Historic Resources. The existing dwelling shall cease to be used as a dwelling within three months after completion of the replacement dwelling. The landowner shall sign a covenant as required by BCC 55.405(6).~~

~~(18) Existing hunting preserve, as follows . . .~~

\* \* \*

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

\* \* \*

(6) A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141. The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. The County shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(7) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings, and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

\* \* \*

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

\* \* \*

~~(h) The breeding, kenneling and training of greyhounds for racing.~~

~~(i)(h) Composting facilities for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-96-020.~~

\* \* \*

#### **ACCESSORY FARM DWELLINGS**

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

(1) Accessory farm dwellings are permitted on a legally established parcel or lot if each accessory dwelling meets all the following requirements:

(a) The subject property and contiguous property in the same ownership are in farm use;

(b) The accessory dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the

management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the primary farm operator;

\* \* \*

#### **CONDITIONAL USES**

**55.205 Conditional Uses Reviewed by the Planning Official subject to BCC 53.215, BCC 53.220, and BCC 55.215.** The following uses may be allowed in the Exclusive Farm Use Zone by conditional use permit approved by the Planning Official, except as otherwise prohibited by BCC 55.108:

(1) Commercial activity in conjunction with farm use, but not including the processing of farm crops pursuant to BCC 55.106(6) including the processing of farm crops into biofuel not permitted under BCC 55.105(10) or BCC 55.106(6).

\* \* \*

(19) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located. This use shall not be approved on High-Value Farmland. This use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.

Public or private schools legally existing prior to January 1, 2010 may be continued, altered, restored, replaced, or expanded subject to the provisions of BCC 53.317.

\* \* \*

**55.210 Conditional Uses Approved by the Planning Commission, subject to BCC 53.215, BCC 53.220, and BCC 55.215.** The following uses may be allowed in the Exclusive Farm Use Zone by conditional use permit approved by the Planning Commission, except as otherwise prohibited by BCC 55.108:

\* \* \*

(9) Hunting preserves, except on high-value farmland. Note that a private hunting preserve that existed as of July 28, 2003, may continue to operate pursuant to BCC 55.105(2018) and subject to the following:

\* \* \*

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

\* \* \*

(1) (f) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based. Note: The Benton County Comprehensive Plan policies for big game habitat currently do not apply to land in the Exclusive Farm Use zone.

\* \* \*

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

(1) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under ORS 215.213 (3) or 215.284 (1), (2), (3) or (4); or

(2) For historic property that meets the requirements of ORS 215.283 (1)(e)(L).

\* \* \*



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## Chapter 60

### Forest Conservation (FC)

\* \* \*

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

\* \* \*

#### **60.080 Soils Designations.**

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

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

\* \* \*

#### **PERMITTED USES**

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

\* \* \*

(12) Widening of roads within existing rights-of-way in conformance with the transportation policies of the Comprehensive Plan including public roads and highway projects as described in ORS 215.283(1)(~~k~~)(h) through ~~(n)~~(k).

\* \* \*

**60.108 DWELLINGS IN FOREST CONSERVATION ZONE**

\* \* \*

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

(2) **Template Test.** A dwelling may be allowed if the lot or parcel is predominantly composed of soils that are:

\* \* \*

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

\* \* \*

**60.220 Conditional Use Criteria.** (1) A use allowed under BCC 60.205 or 60.215 may be approved only upon findings that the use:

\* \* \*

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

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

\* \* \*

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

\* \* \*

- 2) A division of a lot or parcel containing two or more dwellings may be approved subject to the following requirements:

\* \* \*

- (e) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the Planning Official indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to Statewide Planning Goal 4 or unless the land division is subsequently authorized by law or by a change in a Statewide Planning Goal 4.

\* \* \*

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

(1) One of the parcels shall be purchased or otherwise acquired by a governmental or not-for-profit provider of public parks or public open space, or a not-for-profit land conservation organization;

(2) The parcel created by the land division that is not acquired by the governmental or not-for-profit provider of public parks or public open space, or a not-for-profit land conservation organization, shall comply with the following:

(a) If the parcel contains a dwelling or another use allowed under ORS chapter 215, the parcel must be large enough to support continuation of the residential use or other allowed use of the parcel; or

(b) If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 "Parks" or as may be authorized under BCC 55.230, 60.108(1), 60.108(2), or 60.109, based on the size and configuration of the parcel;

(3) Prior to approval of the proposed division of land, the provider of public parks or open space or the land conservation organization shall sign for recording in the County deed records an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:

(a) Establishing a dwelling on the parcel;

(b) Developing the parcel for any use not authorized in a forest zone except park or conservation uses; and

(c) Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937; and

(4) If a proposed division of land under this section results in the disqualification of a parcel for a special assessment described in ORS 308A.718 or the withdrawal of a parcel from designation as riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS 308A.371 or 308A.700 to 308A.733 before the County may approve the division.

#### **SITING STANDARDS**

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

\* \* \*

(6) All new structures shall be sited on the lot or parcel so that:

(a) They have the least impact on forest operations and accepted farming practices on nearby or adjoining lands;

(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and

(d) The risks associated with wildfire are minimized.

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

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

(1) A dwelling shall be placed at least thirty (30) feet from all property lines, and at least forty-five (45) feet from all roadways. Architectural features shall not project more than two (2) feet into a required setback.

\* \* \*

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## Chapter 94

### Property Line Adjustments

\* \* \*

**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)(b) or (5)(c) 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) A property line adjustment shall not be used to qualify an abutting vacant tract for a dwelling based on acreage in cases where:
  - (A) The tract decreasing in size contains a dwelling or is approved for a dwelling, or, if the tract has no dwelling, after the property line adjustment the tract would continue to meet the minimum tract size required to qualify for a dwelling; and
  - (B) After the property line adjustment the lot or parcel decreasing in size would be smaller than the minimum parcel size, whether or not it was smaller than the minimum parcel size before the property line adjustment.

(b) In cases where 94.300(3)(a)(A) and (B) are true, a deed restriction shall be recorded on the vacant tract increasing in size, stating that the transferred acreage can not be

used to qualify the vacant tract for a dwelling based on an acreage standard. The deed restriction shall be provided by the Community Development Department for signature by the property owner(s), and shall be recorded concurrent with the final approval of the property line adjustment. The applicant shall be responsible for fees for document preparation and recording.

(c) **Example:** The minimum property size in the Exclusive Farm Use (EFU) zone is 80 acres. If a lot or parcel of EFU zoned land is 160 acres or more, and other code criteria are met, a dwelling right may be allowed. Property A and Property B are abutting. Property A is 30 acres and contains a dwelling legally built in 1948. Property B is 150 acres and contains no dwelling. A property line adjustment transferring 10 acres from Property A to Property B shall not qualify the resultant 160 acre Property B for a dwelling right, and a deed restriction pursuant to BCC 94.300(3)(b) shall be recorded on Property B.

- (4) (a) A property line adjustment in which the property decreasing in size qualified for a dwelling based on an acreage standard shall require the recording of a deed restriction prohibiting use of any of that property to qualify another tract for a dwelling based on an acreage standard. The deed restriction shall be recorded on both properties involved in the property line adjustment. The deed restriction shall be provided by the Community Development Department for signature by the property owner(s) and shall be recorded concurrent with the final approval of the property line adjustment. The applicant shall be responsible for fees for document preparation and recording.

(b) **Example:** The minimum property size in the Forest Conservation zone is 80 acres. If 160 acres of Forest Conservation zoned land are contiguous and under the same ownership and meet other code criteria, a dwelling right may be allowed. Property C and Property D are abutting and under the same ownership. Property C contains 70 acres and Property D contains 100 acres. Together Property C and Property D total 170 acres, and a dwelling right was approved for that tract. Property E abuts Property D. Property E is 150 acres. If 10 acres of Property D were transferred to Property E, Property D would still comply with the 80-acre minimum parcel size and Property E would then total 160 acres. However, because the acreage in Property C and Property D was already used to qualify that tract for a dwelling, no part of the land that was within Property C or Property D can be used to obtain a dwelling right for Property E or any other property. The property line adjustment transferring the 10 acres might be allowed, however a deed restriction will be required to be recorded on all the properties involved in the transfer, stating that the land being transferred has already been used to obtain a dwelling right and can not be used again.

(4)(5) 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.

~~(5)~~(6) 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.

~~(6)~~(7) 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.

\* \* \*

**94.450 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 application nor decision pursuant to Chapter 51 is required.

## Chapter 97 Subdivisions

\* \* \*

**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, ~~180 N.W. Fifth Street, Corvallis.~~
- (f) Soils using USDA ~~Soil~~ Natural Resources 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.

\* \* \*

(2) An application shall further include three copies of a narrative that provides the following information.

- (a) A phased development schedule.
- (b) A schedule for construction of all improvements.
- (c) The proposed method for providing water supply for each parcel or lot and documentation required to demonstrate compliance with BCC 99.840 to 99.850.
- (d) The proposed method for providing sewage disposal for each parcel or lot.
- (e) Description of the impact of the proposed subdivision on water, sewer, fire protection, law enforcement, schools, hospitals, solid waste disposal and other services.
- (f) Description of all community facilities or systems including a maintenance program for such systems.
- (g) A copy of tentative covenants, conditions and restrictions, if any, proposed by the applicant.

\* \* \*

**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.~~





Benton County  
 Community Development Dept  
 360 SW Avery Ave  
 Corvallis OR 97333-1139

ACTUALLY SAVED 2.00 (USPS)

ATTN: PLAN AMENDMENT SPECIALIST  
 DEPT OF LAND CONSERVATION & DEVELOPMENT  
 635 CAPITOL ST NE STE 150  
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