



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

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[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: August 17, 2015

Jurisdiction: Benton County

Local file no.: LU-15-018

DLCD file no.: 002-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 08/13/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 35 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us)



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

**FOR DLCD USE**

File No.: 002-15  
 Received: {23723}  
 8/14/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption**. (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: Benton County

Local file no.: **LU-15-018**

Date of adoption: August 4, 2015

Date sent: 8/13/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 5/22/15

No

Is the adopted change different from what was described in the Notice of Proposed Change?    Yes    No

If yes, describe how the adoption differs from the proposal:

NO.

Local contact (name and title): Kristin Anderson

Phone: 541-766-6298

E-mail: kristin.anderson@co.benton.or.us

Street address: 360 SW Avery Ave.

City: Corvallis

Zip: 97333-1139

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

#### **For a change to comprehensive plan text:**

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

#### **For a change to a comprehensive plan map:**

Identify the former and new map designations and the area affected:

Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

**If the comprehensive plan map change is a UGB amendment** including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**If the comprehensive plan map change is an urban reserve** amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

Chapter 51 "Development Code Administration."

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

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List affected state or federal agencies, local governments and special districts: none

Identify supplemental information that is included because it may be useful to inform DLCDC or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

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

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

**AFTER RECORDING RETURN TO**  
*Kristin Anderson*  
*Benton County Community Development*

**In the Matter of a Second Reading Amending Chapter 51 of the Development Code,  
Ordinance No. 2015-0267**

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

Benton County  
\_\_\_\_\_  
\_\_\_\_\_

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

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

BENTON COUNTY, OREGON **2015-535032**  
MI-MISCR  
Cnt=1 Stn=47 COUNTER2 **08/07/2015 09:13:30 AM**  
This is a no fee document **NO FEE**



00305677201505350320180180

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

James V. Morales - County Clerk



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

**In the Matter of Amending the Benton )  
County Development Code Chapter 51. )  
)**

**ORDINANCE No. 2015-0269**

**WHEREAS**, the proposed amendment will clarify, correct, and/or increase consistency with other sections of Benton County Development Code and with statute and administrative rules of the State of Oregon; and

**WHEREAS**, the proposed amendment will improve efficiency and promote sound land use decisions; and

**WHEREAS**, the Benton County Planning Commission held a duly advertised public hearing on May 5, 2015, and voted to recommend that the Board of Commissioners approve the attached Development Code amendment; and

**WHEREAS**, the Benton County Board of Commissioners held a duly advertised public hearing on June 2, which was continued to July 21, 2015, to receive testimony from the public and to consider the request; and

**WHEREAS**, the Benton County Board of Commissioners finds that the proposed Development Code amendment complies with the criteria of Benton County Development Code; and

**WHEREAS**, the Benton County Board of Commissioners has considered the staff report, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated and approved the proposed amendment to the Development Code and conducted the First Reading of the proposed Ordinance on July 21, 2015; and

**WHEREAS**, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on August 4, 2015.

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

**PART I:**     Short Title. Amendment to the Benton County Development Code Chapter 51.

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

**PART III:**   The Development Code amendment to Chapter 51 proposed in Planning File No. LU-15-018 is hereby approved, based on the Findings of Fact and Conclusions of Law contained in the attached "Exhibit 2" and hereby adopted and incorporated herein.

**PART IV:** Benton County Development Code is hereby amended as shown in "Exhibit 1."

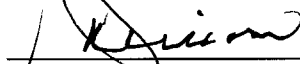
**PART V:** The effective date for this amendment to the Benton County Development Code will be:

First Reading: July 21, 2015

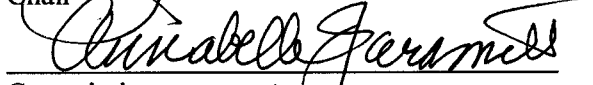
Second Reading: August 4, 2015

Effective Date: September 3, 2015

**BENTON COUNTY BOARD OF COMMISSIONERS**

  
\_\_\_\_\_

Chair

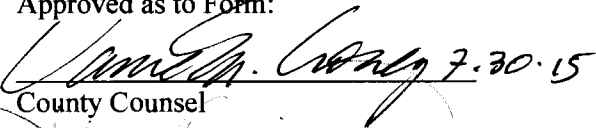
  
\_\_\_\_\_

Commissioner

  
\_\_\_\_\_

Commissioner

Approved as to Form:

  
\_\_\_\_\_

County Counsel

  
\_\_\_\_\_

Recording Secretary

**Exhibit 1**  
**Development Code Text Amendment**  
**Amendment to Chapter 51; File # LU-15-018**

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

**Chapter 51**  
**Development Code Administration**

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**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.
- ~~(6)~~(7) "Church" means a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship. When a church is allowed on real property pursuant to the Development Code, also allowed shall be the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.
- ~~(7)~~(8) "Day care center" means an establishment providing specialized group care for thirteen or more children.
- ~~(8)~~(9) "Driveway" means access to private land.
- ~~(9)~~(10) "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.

(+0)(11) \_\_\_\_\_ "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.

(+1)(12) \_\_\_\_\_ "Dwelling, multi-family" means a building used by two or more families living independently of each other in separate dwelling units.

(+2)(13) \_\_\_\_\_ "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.

(+3)(14) \_\_\_\_\_ "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)~~(15) "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)~~(16) "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)~~(17) "Flag lot" means a parcel or lot connected by means of a narrow strip of land to a road right-of-way.

~~(17)~~(18) "Flood hazard" means a risk to life or property caused by flooding.

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

~~(19)~~(20) "Floodplain" means a land area capable of being inundated by water during a base flood.

~~(20)~~(21) "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)~~(22) "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)~~(23) "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)~~(24) \_\_\_\_\_ "Frontage" means the boundary of a parcel or lot abutting a road.

~~(24)~~(25) \_\_\_\_\_ "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)~~(26) \_\_\_\_\_ "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)~~(27) \_\_\_\_\_ "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)~~(28) \_\_\_\_\_ "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)~~(29) \_\_\_\_\_ "Land division" means a subdivision or land partition where a new lot or parcel is created.

~~(29)~~(30) \_\_\_\_\_ "Landfill" means land used for the disposal of solid wastes, and may include the removal and classification of recycled materials.

~~(30)~~(31) \_\_\_\_\_ "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)~~(32) \_\_\_\_\_ "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)~~(33) "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.

~~(34)~~ "Major stream" means that stretch of a creek designated as a flood hazard area on the Flood Insurance Rate Maps.

~~(35)~~ "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.

~~(33)~~(36) "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.

~~(34)~~(37) "Minor stream" means that stretch of a creek which is not designated as a flood hazard area on the Flood Insurance Rate Maps.

~~(35)~~ "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.

~~(e)~~ 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.

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

~~(37)~~(39) "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.

~~(38)~~(40) "Nonfarm use" means any use which is not a "farm use" as defined by this code.

~~(39)~~(41) "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.

~~(40)~~(42) "Ordinary high water line" means the top of the bank of a stream or river.

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

~~(42)~~(44) "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~~(34)~~.

- (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]

~~(43)~~(45) "Park, Developed" means an area open to the public for active or passive outdoor recreation and containing structures, other improvements, or alterations of the landscape, including but not limited to picnic shelters, permanent restrooms, playground equipment, and sports fields. "Developed Park" is distinguished from "Natural Area" by the level and type of landscape alteration.

~~(44)~~(46) "Partition land" means to divide land into two or three parcels or lots within a calendar year. "Partition land" does not include a division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or an adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance; or a sale or grant by a person to a public agency or public body for state highway, county road, or other right-of-way purposes, provided that such road or right-of-way complies with the applicable comprehensive plan and other provisions of this code. However, any property divided by the sale or grant of property for state highway, county road, or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.

~~(45)~~(47) "Planning Official" means the Director of the Community Development Department or the Director's designee.

~~(46)~~(48) "Property line" means the exterior boundary of a lot or parcel. For contiguous lots or parcels held in common ownership and combined for development purposes, the property line for purposes of setbacks shall be the exterior boundary of the combined lots

or parcels. Unless otherwise specified, setbacks set forth in this code shall be measured to the property line.

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

(48)(50) "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 Services. A public water system is either a "community water system" or a "non-community water system".

(a) "Community water system" means a public water system which has fifteen (15) or more service connections used by year-round residents, or which regularly serves twenty-five (25) or more year-round residents;

(b) "Non-community water system" means a public water system that is not a community water system.

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

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

(51)(53) "Replat" means the act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.

(52)(54) "Residential facility" means a facility licensed by or under the authority of the Oregon Department of Human Resources Services under ORS 443.400 to 443.460 which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet Oregon Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(53)(55) "Residential home" means a home licensed by or under the authority of the Oregon Department of Human Resources Services under ORS 443.400 to 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet Oregon Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(54)(56) "Resource zone" means the Exclusive Farm Use, Multi-Purpose Agriculture, Floodplain Agriculture, Forest Conservation, and Open Space Zones.

(55)(57) "Restoration" means the process of accurately recovering the form and details of the property and its setting as they appeared at a particular period of time by means of removal of later improvements, or by the replacement of missing earlier features.

~~(56)~~(58) \_\_\_\_\_ "Right-of-way" means the area between the boundary lines of a road.

~~(57)~~(59) \_\_\_\_\_ "Road" means the entire right-of-way of any public or private way that provides access for persons to property.

- (a) "Private road" means a road that has not been dedicated for public use and in which no rights have accrued to the public.
- (b) "Public road" means a road dedicated to the public, or a road which the public has accrued a right to use.
- (c) "County road" means a public road that has been accepted by the Board of Commissioners into the County road maintenance system.

~~(58)~~(60) \_\_\_\_\_ "Roadway" means the road surface improved for use by vehicular traffic.

~~(59)~~(61) \_\_\_\_\_ "Sanitary landfill" means land used for the disposal of solid wastes in accordance with State and County requirements.

~~(60)~~(62) \_\_\_\_\_ "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.

~~(61)~~(63) \_\_\_\_\_ "Seasonal farm-worker" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in production of farm products or planting, cultivating or harvesting of seasonal agricultural crops or in forestation or reforestation of lands, including by not limited to, the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

~~(62)~~(64) \_\_\_\_\_ "Seasonal farm-worker housing" means housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months a year.

~~(63)~~(65) \_\_\_\_\_ "Secondary road" means a road which is not required to meet County urban or rural road standards.

~~(64)~~(66) \_\_\_\_\_ "Setback" means the minimum allowable horizontal distance from a given line of reference (usually a property line) to the nearest vertical wall of a structure.

~~(65)~~(67) \_\_\_\_\_ "Sign face" means the entire surface area of a sign upon which a message can be placed.

- (a) Where a sign has two display faces back to back, the area of only one face shall be considered the sign face. If one face is larger, the area of the larger sign face shall be considered the sign face. The supporting structure or bracing of a sign shall not be counted as part of the sign face, unless such structure or bracing is made a part of the sign's message.
- (b) Where a sign has more than one display face, all areas which are viewed simultaneously shall be considered the sign face of a single sign. All faces displayed on the same means of support, such as a single pole, shall be considered a single sign.

~~(66)~~(68) "Structural alterations" means a change in the supporting members of a structure, such as bearing walls, columns, beams, girders, or foundations.

~~(67)~~(69) "Structure height" means the vertical distance from the average finished grade to the highest point of a roof. "Average finished grade" means the midpoint between the highest and lowest finished grades adjacent to the building.

~~(68)~~(70) "Subdivide land" means to divide land into four or more lots within a calendar year.

~~(69)~~(71) "Subdivision" means either the act of subdividing land or a tract of land subdivided.

~~(70)~~(72) "Surface mining" means the extraction or processing of mineral or aggregate resources.

~~(71)~~(73) "Tract" means, for the purposes of the Exclusive Farm Use and Forest Conservation zones and Chapter 100, one or more contiguous lots or parcels in the same ownership. [Ord 94-0108; Ord 2001-0174]

~~(72)~~(74) "Urban fringe" means that area between an urban growth boundary and the city limits of an incorporated city.

~~(73)~~(75) "Water dependent use" means a use or activity which can be carried out only on or near water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water. "Water dependent use" does not include effluent treatment and/or disposal.

~~(74)~~(76) "Water related use" means a use which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water dependent land or waterway use. "Water related use" does not include a dwelling, parking lot, spoil dump site, road, restaurant, business, factory, or trailer park.

~~(75)~~(77) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

~~(76)~~(78) "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.

\* \* \*

## 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.

\* \* \*

**51.610 Public Notice Requirements for Quasi-Judicial Land Use Actions.** (1) When BCC 51.605(1) requires public notice, ~~the Planning Official shall mail notice of a proposed quasi-judicial land use action for which BCC 51.605(1) requires public notice at least 14 days prior to the date of decision or public hearing and~~ shall publish notice of the application in a newspaper of general circulation in Benton County. In the case of a quasi-judicial land use action proposing to limit or prohibit a currently allowed use on a property, the notice requirements of BCC 51.608 shall apply. The notice required by BCC 51.610 shall be sent by regular mail to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(a) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(b) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(c) Within 750 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone. If the 750 foot radius includes a portion of a neighborhood zoned for resource use that exceeds a density of one residence per two acres, the notice area shall be expanded to 1000 feet in that neighborhood only.

(d) The distances prescribed in subsections (a) through (c) of this section shall be considered minimums; the intent of this section is to notify property owners who could be affected by the proposed land use action.

(2) Failure of a property owner to receive notice as provided by subsection (1) of this section shall not invalidate the proceedings if the Planning Official can demonstrate by affidavit that notice pursuant to subsection (1) was given.

(3) The Planning Official shall publish notice of all land use actions which require a public hearing in at least one newspaper of general circulation in Benton County. Notice shall be published at least ten (10) days prior to the date of public hearing. The applicant shall pay the cost of the newspaper publication.

(4) Notice shall be provided to:

(a) Any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

~~(5)~~ Notice shall be provided to:

~~(b)~~ The Oregon Department of Transportation (ODOT) when the proposed land use action could affect an ODOT facility (including roads).

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

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

~~(56)~~ 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.

\* \* \*

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

(1) All legislative land use actions shall be noticed pursuant to this section.

(a) A legislative land use action proposing to limit or prohibit a use currently allowed on a property shall also be subject to the notice requirements of BCC 51.608.

(b) Exception: The provisions of this section do not apply to a Comprehensive Plan or Development Code amendment that is solely for the purpose of conforming to new requirements in state statutes, Planning Goals, or administrative rules when the change will be adopted without a public hearing, pursuant to BCC 53.630.

~~(42)~~ Notice of all legislative land use actions shall be provided to the Oregon Department of Land Conservation and Development as ~~prescribed in 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.~~

~~(23)~~ The Planning Official shall publish notice of a proposed legislative land use action in at least one newspaper of general circulation in Benton County. Notice shall be published at least ten (10) days prior to the date of public hearing. Published notice shall contain the information specified in BCC 51.615(1).

~~(34)~~ 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.

~~(45)~~ 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.

~~(56)~~ Notice shall be provided to:

~~(a)~~ The Oregon Department of Transportation (ODOT) when the proposed land use action could affect an ODOT facility.

(b) Oregon Department of Fish and Wildlife, pursuant to BCC 53.615.

(67) 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]

\* \* \*

**51.625 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]

\* \* \*

**Exhibit 2**  
**Findings of Fact and Conclusions of Law**  
**Amendment to Chapter 51; File # LU-15-018**

**A. FINDINGS APPLYING DEVELOPMENT CODE CRITERIA**

**Benton County Development Code Provisions for Text Amendment**

**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:** This code amendment is a response to changing policies and conditions, and also clarifies the text.

**Newspaper Notice:** Current code requires notice of land use *decisions* to be published in the newspaper. However, in cases where public input could factor into the decision, it makes sense to publish a notice of *application*, so that community members can be involved in the process before a decision is made. Under state law, staff reports are available for a minimum of 7 days *prior* to these decisions, and this is a more effective time for interested parties to raise any concerns with the proposal than after the decision has been made.

**Definitions:** The proposed code amendment is also a result of changing policies from the state legislature. For example, under the proposed amendment, if the zoning allows a “nonresidential place of worship” on a property, then certain other reasonable and customary uses, such as religion classes, funerals, and meal programs, however not school education, shall also be allowed on that property.

**Conclusion:** The proposed amendment meets 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 County Commissioners directed the Planning Official to initiate this code amendment on March 17, 2015. This staff report constitutes a background report discussing the justifications for the proposed amendment.

**Conclusion:** The proposed amendment was 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 public hearing on May 5, 2015, and voted to recommend that the Board of Commissioners approve amendments to Chapters 51, 53, and 95.

The Board of Commissioners conducted a public hearing on June 2, 2015, and voted to adopt a modified version of the proposed text amendment to Chapters 53 and 95, and to continue the hearing on Chapter 51 to July 21.

**Conclusion:** The Planning Commission and Board of Commissioners public hearings complied with the procedure stipulated here, and the conduct of the upcoming Board of Commissioners public hearing will comply as well.

## **B. SUMMARY AND CONCLUSION**

**The Board of Commissioners findings and conclusions are:**

The proposed amendment is consistent with the applicable provisions of the Benton County Development Code. The Planning Commission has recommended that the Board of Commissioners adopt portions of the proposed code amendment attached. **The Board of Commissioners concludes that all criteria have been met and approves the Development Code text amendment.**



**COMMUNITY DEVELOPMENT DEPARTMENT**

360 SW Avery Avenue  
Corvallis, OR 97333-1139  
(541) 766-6819  
FAX (541) 766-6891

**NOTICE OF DECISION**

The Benton County Board of Commissioners has conducted public hearings and adopted the following amendment.

<b>ADOPTED AMENDMENT:</b>	<b>Amendment to Development Code Chapter 51 “Development Code Administration.”</b>		
<b>APPLICABLE CRITERIA:</b>	Benton County Code Sections 53.605 through 53.625 (Text Amendment).		
<b>AFFECTED PROPERTY:</b>	All land within Benton County.		
<b>STAFF CONTACT:</b>	Kristin Anderson	<b>FILE NUMBER:</b>	LU-15-018

**DECISION:**

On August 4, 2015, the Benton County Board of Commissioners adopted Ordinance No. 2015-0269, amending Chapter 51 “Development Code Administration” of the Benton County Development Code.

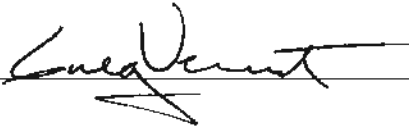
The amendment is as follows:

- An update from the state legislature which states that if zoning allows a “nonresidential place of worship,” then certain other reasonable and customary uses, such as religion classes, funerals, and meal programs, however not school education, shall also be allowed on that property.
- An update from the state legislature regarding notices for amendments that are solely for the purpose of conforming to new requirements in state statutes, Planning Goals, or administrative rules.
- A Notice of Application will be published in the newspaper for certain land use applications instead of a Notice of Decision.

This summary is only an overview. Additional changes improved clarity, consistency, or fixed typos. For complete details refer to the ordinance, which is available from the Community Development Department, 360 SW Avery Avenue, Corvallis, 541-766-6819.

The adopted amendment will go into effect on September 3, 2015. The amendment and the findings of fact are available for inspection at no cost from the Community Development Department, Monday through Friday, usually between 8 A.M. and 5 P.M., except during

meetings. Please call ahead to determine staff availability, 541-766-6819. A copy can be provided for the cost of copying, or emailed free of charge.

PLANNING OFFICIAL:  Date of Notice: August 13, 2015

This decision may be appealed to the Land Use Board of Appeals (LUBA) within 21 days of the date of this notice. A person may appeal this decision if the person participated in the proceedings through written or oral testimony. For information on appeal procedures, contact:

Land Use Board Of Appeals (LUBA)  
550 Capitol Street NE, Suite 235  
Salem, OR 97301-2552  
(503) 373-1265

**NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS 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 promptly forward a copy of this notice to every person with a documented interest, including a renter or lessee.