

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

**In the Matter of Amending the Benton )  
County Development Code – Chapters )  
97, 99 and 100. )**

**ORDINANCE No. 2011-0240**

**WHEREAS**, pursuant to the National Pollution Discharge and Elimination System, Benton County is required by Oregon Department of Environmental Quality to effectively prohibit non-stormwater discharges into the County’s municipal separate storm sewer system; and

**WHEREAS**, in order to comply with the terms of NPDES permit issued to Benton County by DEQ, the County is required to implement a permit program for erosion and sediment control from large construction sites and implement requirements for long-term, post-construction management of stormwater from developed sites; and

**WHEREAS**, Benton County has coordinated development of these programs with the Cities of Corvallis and Philomath; and

**WHEREAS**, the amendments contained in this ordinance will establish partial compliance with the NPDES permit; and

**WHEREAS**, the Benton County Planning Commission held a duly advertised public hearing on March 15, 2011, and voted unanimously to recommend that the Board of Commissioners approve the Development Code amendments as modified by the Planning Commission; and

**WHEREAS**, the Benton County Board of Commissioners held a duly advertised public hearing on April 5, 2011, to receive testimony from the county at-large and to consider the request; and

**WHEREAS**, the Board of County Commissioners finds that the proposed Development Code Amendments comply with the criteria of Benton County Code 53.605 through 53.625, and are consistent with the applicable policies and procedures of the Comprehensive Plan; 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 amendments to the Development Code, and conducted the First Reading of the proposed Ordinance on April 5, 2011; and

**WHEREAS**, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on April 19, 2011.

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

- PART I:**     Short Title. Amendments to the Benton County Development Code Chapters 97, 99 and 100 to establish an erosion/sediment control permit and long-term stormwater management requirements.
- 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 amendments proposed in Planning File No. LU-10-052 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 July 1, 2011.

**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-10-052**

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

To comply with the federal Clean Water Act, the Oregon Department of Environmental Quality (DEQ) requires all local governments within urbanized areas exceeding 50,000 residents to comply with certain requirements for stormwater management. Benton County has jurisdiction within a portion of the urbanized area<sup>1</sup> that includes the cities of Corvallis and Philomath.

Benton County was required to, and in 2007 did, submit to DEQ a plan of action for six "Control Measures." Control Measures include such topics as Public Education and Illicit Discharge Detection and Elimination. Control Measure #4 requires the County to implement an erosion and sediment control permitting program for construction activities with total disturbed area of 1 acre or more. Control Measure #5 requires the County to implement measures for management of stormwater from developed sites over the long term (i.e., post-construction).

The proposed amendments to the Development Code (Attachment A) are major elements in achieving compliance with the DEQ requirements for Control Measures #4 and #5. The timeline Benton County established with DEQ stated that these two code provisions would be adopted by March 2011. We have been granted an extension of time.

Development of the proposed code has occurred within the context of a broader effort to inform the public and gather input around stormwater-related issues. Since 2007, County staff have made presentations or had informational materials available at numerous local events, including stormwater public meetings, daVinci Days, the annual forum hosted by the Benton County Environmental Issues Advisory Committee, the Benton County Fair, and watershed tours.

In December 2009, staff mailed letters and sent emails to a broad range of the local construction community (home builders, excavation companies, engineering firms), inviting them to participate on this committee. Ultimately five such individuals joined the committee, and from January to May 2010, monthly meetings were held to obtain input. In October 2010, staff sent the draft code amendments to the participants for their review and comment.

Additional input has been obtained over the past two years through monthly interagency staff meetings for coordination on stormwater and water quality issues. Participants include staff from Benton County Planning, Building, Public Works and Environmental Health; City of Philomath Public Works; City of Corvallis Stormwater; Benton Soil and Water Conservation District; and Marys River Watershed Council.

The proposed code was drafted by utilizing existing ordinances from other Oregon jurisdictions as well as the concepts from the advisory committee and interagency team. Concepts and drafts have been refined based on input from DEQ, and from the Planning Commission in a worksession on November 16, 2010.

The most recent public information meeting was on February 23, 2011. It was advertised by press release, information on the County website, and a mailed notification to approximately 30 local contractors. Unfortunately, the meeting was sparsely attended, perhaps due in part to inclement weather.

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<sup>1</sup> The boundary of the urbanized area is federally designated based on contiguous census tracts with a population density exceeding 1000 persons per square mile. This is called the Federal Urbanized Area.

The proposed amendments (Attachment A) have been drafted to:

- Comply with the mandate from DEQ;<sup>2</sup>
- Be comparable to requirements already in effect in the City of Corvallis;
- Allow the City of Philomath to also adopt these requirements;
- Address the situations most likely to result in significant stormwater impacts to water bodies;
- Minimize cost to developers and to the County, while protecting water quality.

## **B. PROPOSED AMENDMENTS**

The following is a summary of the amendments.

### **Chapter 97 (Subdivision):**

- Cross-reference the stormwater plan required with a subdivision application to the proposed Chapter 99 stormwater requirements.

### **Chapter 99 (General Development Standards):**

#### Definitions

#### Erosion and Sediment Control

- Enable County to require erosion control permit for development activities on “sensitive lands”
- Create Erosion and Sediment Control permit requirement for construction sites
- Specifically exempt certain activities including accepted farm and forest practices
- Establish a level of required erosion control practices proportional to the potential impact of ground disturbance on the specific site
- Establish responsibility and required actions by permittee

#### Long-Term Stormwater Management

- Require stormwater site plan approval for construction within the Federal Urbanized Area or the Corvallis Urban Growth Boundary
- Reference design criteria manual for stormwater management methods
- Maintenance and repair:
  - For facility serving a single property is responsibility of the property owner
  - For facility serving multiple properties will become County responsibility, with developer required to pay an up-front fee to offset County costs.

#### Enforcement Provisions

### **Chapter 100 (Planned Unit Development in the Corvallis Urban Fringe):**

- Cross-reference the stormwater plan required with a subdivision application to the proposed Chapter 99 stormwater requirements.
- Specify that required drainage improvements be designed and approved pursuant to the proposed Chapter 99 stormwater requirements.

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<sup>2</sup> DEQ staff reviewed the draft code and provided comment in November 2010. Those comments are reflected in the current draft, which will undergo a second round of review by DEQ, with potential need for further modification.

## 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 text.*

**Findings:** The federal Clean Water Act requirements are a change in policy and conditions, which Benton County must respond to.

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

**Findings:** In March 2007, the Board of Commissioners approved submittal of Benton County's Stormwater Management Program to DEQ. The program specifically included a timeline for development of the code amendments that are currently proposed. Approval of this program by the Board of Commissioners was understood to initiate the code amendment process. This staff report constitutes the background report called for in this code section.

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

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

**Findings:** The Planning Commission conducted a hearing on March 15, 2011, and has forwarded a recommendation to the Board of Commissioners.

**Conclusion:** The upcoming hearings will comply with the procedure stipulated in this code section.

## D. APPLICABLE COMPREHENSIVE PLAN POLICIES

Staff has identified the following Comprehensive Plan policies that are relevant to the proposed code amendments.

**5.6.2** Benton County shall not regulate commercial timber management and commercial farming for potential impacts to water bodies and riparian areas; the Oregon Department of Forestry and Oregon Department of Agriculture have the responsibility for these activities.

**6.1.2** In cooperation with appropriate agencies, Benton County shall manage its air, water and land resources to insure their protection, conservation, restoration, or enhancement.

**6.1.5** Benton County shall work with local citizens and appropriate local, state and federal agencies to establish partnerships to achieve enforcement of air, land, and water quality standards.

**6.1.6** Through its maintenance and operations, Benton County shall demonstrate use of "best management practices" and promote their use through public education and awareness to assure that sediment transport is minimized and pesticides and herbicides are not dispersed so as

to adversely affect human health and land and water resources.

**6.1.7** Benton County shall consider the physical capacity of the land and water to accommodate land uses when planning for the location, type, and density of rural development.

**6.1.8** Benton County shall place a high priority on public education and enforcement related to environmental rules and regulations.

**6.2.4** Benton County shall place a high priority on maintaining natural systems and processes as a biological method for maintaining and protecting clean water.

**6.2.5** Benton County shall collaborate with others to promote watershed management practices that protect and enhance water quality and quantity.

**6.2.6** Benton County shall require development to be designed or located in a manner that will result in no net degradation of water quality and quantity.

**6.2.10** Water resources shall be managed wherever possible on a watershed or landscape scale to assure continuity and integrity of practices to the waterway.

**7.3.5** To minimize surface water runoff, prevent erosion, and reduce landslide hazards, Benton County shall regulate development activities that create major disturbance to soil and vegetation in flood and slide prone areas.

**7.3.6** Benton County shall require properly designed protective measures for proposed land uses on sites that have severe use limitations because of soil conditions described in the Benton County Geological Hazards Study or soil surveys.

**11.4.1** Benton County shall require proposed developments to address on-site and off-site stormwater runoff to minimize impacts to downstream properties.

**11.4.2** Benton County shall use watershed management strategies and green infrastructure to

reduce stormwater impacts, by utilizing and enhancing natural drainage systems, in order to ensure a healthy environment and minimize the risk of flooding.

**11.4.3** In coordination with the cities of Corvallis and Philomath, Benton County shall develop a stormwater management plan for the unincorporated portion of the Corvallis Federal Urbanized Area that is consistent with state and federal guidelines; and, where appropriate, Benton County shall develop similar plans, or elements thereof, for other areas of the county.

**Findings:** The proposed program for erosion and sediment control and for long-term stormwater management touches on many Comprehensive Plan policies. The code amendments do not fully implement all Comprehensive Plan policies that relate to water quality and stormwater, but the proposed code is consistent with those policies.

**Conclusion Regarding Comprehensive Plan Policies:** The proposed amendments to the Development Code will be consistent with the applicable Comprehensive Plan policies.

#### **E. CONCLUSION**

The Board of Commissioners concludes that the proposed amendments are consistent with the applicable provisions of the Benton County Code and the Benton County Comprehensive Plan.



**Exhibit 2**

**Amendments to the Benton County Development Code**

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



## Chapter 97

### Subdivisions

\* \* \*

#### APPLICATION

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

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

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

- (a) Lot and road design consistent with the Development Code.
- (b) Location, names, width, elevation and grades of existing and proposed streets in, or adjacent to, the proposed subdivision.
- (c) Contour lines at two foot intervals unless otherwise approved by the County Engineer. Five foot contour lines may be used in areas of greater than fifteen (15) percent slope or if the tract is divided into lots of five (5) acres or more. The source and accuracy of contour shall be specified.
- (d) The location of at least one temporary benchmark within the boundaries of the proposed subdivision.
- (e) The location of all areas subject to the base flood as shown on the Flood Boundary and Floodway Map on file in the office of the Development Department, 180 N.W. Fifth Street, Corvallis.
- (f) Soils using USDA Natural Resources Conservation Service information or field studies prepared from specific site data.
- (g) The proposed lot lines, approximate dimensions, and lot numbers.
- (h) Proposed phases or additions for the completion of public improvements and the filing of final plats.
- (i) The location, width and purpose of all easements.

(j) The location of all utilities including water, sewer, power, telephone, natural gas and cable television.

(k) The proposed plan for stormwater drainage consistent with BCC 99.650 through 99.680, including any off-site improvements.

(l) The location and purpose of all common or public facilities.

(m) The proposed subdivision name, and the name, address, and phone number of the applicant and all representatives responsible for the plan.

(n) A vicinity map showing the boundary of the parent parcel, intersecting property lines, adjacent streets, sewers, water lines and ownerships abutting the boundary of the parent parcel as found in the County Assessor's records.

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

(a) A phased development schedule.

(b) A schedule for construction of all improvements.

(c) The proposed method for providing water supply for each parcel or lot and documentation required to demonstrate compliance with BCC 99.840 to 99.850.

(d) The proposed method for providing sewage disposal for each parcel or lot.

(e) Description of the impact of the proposed subdivision on water, sewer, fire protection, law enforcement, schools, hospitals, solid waste disposal and other services.

(f) Description of all community facilities or systems including a maintenance program for such systems.

(g) A copy of tentative covenants, conditions and restrictions, if any, proposed by the applicant.

(3) The applicant shall submit two copies of the tentative plat and the appropriate fee to the County Surveyor. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2007-0223, Ord 2007-0224, Ord 2009-0232]

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

(1) Ten (10) feet when abutting a rear property line.

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

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

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## Chapter 99

### General Development Standards

**99.005 Scope.** All development within Benton County, including land partitions, subdivisions and associated land development, and the construction of residential dwellings, industrial, commercial, or public buildings and other accessory structures shall conform to applicable standards of this chapter. [Ord 26, Ord 7, Ord 90-0069]

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#### **SENSITIVE LAND**

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**99.110 Consideration.** An applicant for a land division or building permit shall consider the geology, topography, soils, vegetation and hydrology of the land when designing a parcel or lot, or siting improvements. The Planning Official or Building Official may impose conditions or modifications necessary to mitigate potential hazards or otherwise provide for compliance with adopted Comprehensive Plan policies, and may require an erosion and sediment control permit. The Planning Official or Building Official shall consider the recommendation of the County Engineer, municipal officials within urban growth boundaries, and other technical sources in the determination of sensitive land conditions and mitigating measures. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2006-0214]

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#### **FIRE PROTECTION**

**99.605 Annexation to Fire District Required.** If a proposed parcel or lot in a non-resource zone abuts a rural fire protection district, the applicant shall petition for and obtain annexation to the district prior to final approval of a land division. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2006-0214]

#### **STORMWATER MANAGEMENT**

**99.650 Definitions.** As used in BCC 99.650 through 99.680:

- (1) **“County Engineer”** means the County Engineer or the authority designated by the Public Works Director.
- (2) **“Disturbed Area”** means land area subject to ground-disturbing activities.
- (3) **“Ground-disturbing Activity”** means an activity that exposes, works or redistributes soil, including but not limited to excavating, filling, stockpiling, grading, grubbing, or clearing.
- (4) **“Impervious Surface”** means a surface that prevents stormwater from infiltrating the soil, and includes but is not limited to such elements as roads, driveways, parking lots, walks, patios, and roofs.
- (5) **“Interim control measures”** mean short term erosion and sediment control practices to remedy immediate issues as deemed necessary by Benton County.

- (6) “Manual” means the required erosion and sediment control measures designated in the “Benton County Stormwater Management Guide” or its successor document.
- (7) “Non-structural Controls” means long-term stormwater management techniques and installations that do not include constructing facilities or other stormwater infrastructure; examples include natural drainage, bio-swales, and vegetation preservation.
- (8) “Responsible Party” means the party who shall be legally responsible for compliance with the requirements of BCC 99.650 through 99.680. The responsible party shall be the owner of property upon which ground disturbing activities occur, even if the property owner designates others to perform work on the property owner’s behalf. In the case of activities performed within an easement or right-of-way, the person causing the work to be performed shall be the responsible party.
- (9) “Structural Controls” means constructed facilities and other infrastructure related to long-term stormwater management.

**99.660 Erosion and Sediment Control**

- (1) **Purpose:** The purpose of this section is to:
  - (a) Preserve and enhance the health, safety, welfare, financial investment in public and private infrastructure, private property value, and the quality of life of the inhabitants of Benton County by minimizing the risk of flooding, erosion, sedimentation, and other stormwater impacts; and
  - (b) Maintain or improve water quality within Benton County as required under State and Federal National Pollution Discharge Elimination System law.
- (2) **Applicability.** The provisions of this section shall apply to all unincorporated areas of Benton County.
- (3) **Activities Requiring Erosion and Sediment Control Permit.**
  - (a) The responsible party shall obtain an Erosion and Sediment Control (ESC) Permit from Benton County prior to initiation of ground-disturbing activities (except those activities listed in (4) below), if both (A) and (B) are met:
    - (A) The ground-disturbing activities are associated with:
      - (i) Construction or land uses that require a permit or other review by Benton County; and
      - (ii) any of the following:
        - (a) Construction of a public or private road, driveway, or structure; or
        - (b) Site preparation, associated installations (such as a septic system drainfield, ground-source heat pump, or tennis court), landscaping, and other ground-disturbing activities related to such construction.
    - (B) The total area disturbed will be:
      - (i) 1 acre or more; or

- (ii) Less than 1 acre if the ground-disturbing activity is part of a larger common plan of development or sale that will involve a total disturbed area of 1 acre or more. An ESC Permit may be waived for a phased activity in which the cumulative disturbed area is 1 acre or larger if all individual phases disturb less than 1 acre of land and each phase is fully and permanently stabilized prior to initiation of ground disturbance on a subsequent phase.
- (b) All activities shall comply with the Benton County Illicit Discharge Detection and Elimination Code, whether or not the activity requires an Erosion and Sediment Control Permit.
- (c) The responsible party shall also comply with other local, state and federal erosion control regulations that may apply.
- (4) **Exempt Activities.** The following activities are exempt from the permit requirement in subsection 3(a):
  - (a) Accepted farm practices, not including construction of buildings;
  - (b) Forest practices performed pursuant to the Oregon Forest Practices Rules;
  - (c) Excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
  - (d) Emergency measures to protect life, property, public infrastructure, or essential services, in which case an ESC Permit shall be obtained as soon as possible after-the-fact;
  - (e) Mining activities performed pursuant to applicable state permit requirements.
  - (f) Activities, conducted by public agencies, that meet or exceed state or federal standards for erosion and sediment control.
- (5) **Permit Application.** The applicant and/or responsible party shall submit the following:
  - (a) Erosion and Sediment Control Application form;
  - (b) Erosion and Sediment Control Plan demonstrating compliance with the requirements of this section. The plan shall be prepared by an individual(s) with sufficient erosion and sediment control training and qualification to design an erosion and sediment control plan compliant with this code section. The Erosion and Sediment Control Plan for a disturbed area of more than 5 acres shall be prepared by a licensed engineer with relevant experience, or an Oregon Certified Professional in Erosion and Sediment Control.
  - (c) Fee(s) established by the Board of County Commissioners;
  - (d) Other documents deemed appropriate by the County Engineer and/or Planning Official.
- (6) **Level of Potential Impact**
  - (a) The required erosion and sediment control Best Management Practices (BMPs) shall correspond to the level of potential impact of the proposed project as determined using the following table. The County Engineer and/or Planning Official may require a different level of erosion and sediment control due to factors including but not limited

to: proximity to known landslides, steep slopes in the vicinity, and protected conservation areas.

- (b) Unless determined otherwise by the County Engineer and/or Planning Official, the column with two or more checks shall be the required level of erosion control, and in the case of one check in each column, the medium level shall be required. A subdivision shall require a “high” level of erosion control, unless deemed otherwise by the County Engineer.
- (c) The categories of Low, Medium and High correspond to required BMPs listed in the “Benton County Stormwater Management Guide” or its successor document.

<u>Site Conditions</u>	<u>Required Level of Erosion Control:</u>		
	<u>Low</u>	<u>Medium</u>	<u>High</u>
<p><b><u>Distance between the work site and the nearest Sensitive Area down-slope or at the same elevation. Sensitive Areas include:</u></b></p> <ul style="list-style-type: none"> <li>(a) <u>Wetlands identified on a National, State or Local Wetland Inventory, or identified as Potential Wetland on Benton County’s wetland reference map;</u></li> <li>(b) <u>Stream Channel top of bank;</u></li> <li>(c) <u>Riparian Area protected pursuant to Development Code provisions;</u></li> <li>(d) <u>Upland Prairie and Oak Savannah protected pursuant to BCC Chapter 88;</u></li> <li>(e) <u>Potential Habitat for Fender’s blue butterfly as identified in the Prairie Species Habitat Conservation Plan.</u></li> </ul>	<p><u>More than 300 feet</u> <input type="checkbox"/></p>	<p><u>100 to 300 feet</u> <input type="checkbox"/></p>	<p><u>Within 100 feet</u> <input type="checkbox"/></p>
<p><b><u>Average slope across the disturbed area.</u></b></p>	<p><u>0 to 3.9 percent</u> <input type="checkbox"/></p>	<p><u>4 to 10 percent</u> <input type="checkbox"/></p>	<p><u>More than 10 percent</u> <input type="checkbox"/></p>
<p><b><u>Erodibility of predominant soil type, determined from NRCS Soil Survey of Benton County, Oregon (or successor document)</u></b></p>	<p><u>Low Erodibility (K value &lt;0.24)</u> <input type="checkbox"/></p>	<p><u>Medium Erodibility (K value 0.24 to 0.40)</u> <input type="checkbox"/></p>	<p><u>High Erodibility (K value &gt; 0.40)</u> <input type="checkbox"/></p>

(7) **Permit Review and Approval.**

- (a) An Erosion and Sediment Control Permit may be issued upon determination by the County Engineer that the submitted materials demonstrate compliance with the Manual and the applicable Best Management Practices (BMPs) identified pursuant to

Section (6). To address specific conditions of a given site, the County Engineer may require additional or modified BMPs.

- (b) Issuance or denial of an Erosion and Sediment Control Permit is not a land use decision and is not subject to the requirements of a land use decision including but not limited to BCC 51.535, BCC 51.605 through 51.625, and BCC 51.805 through 51.840.

(8) **Permit Period of Validity; Renewal.**

- (a) An Erosion and Sediment Control Permit shall be valid for one year from the date of issuance.
- (b) The responsible party shall request permit renewal if final inspection approval pursuant to subsection (12) of this section has not been obtained prior to expiration of the permit.
- (c) Expiration of an ESC Permit that has not received final inspection approval shall be considered a violation of this code pursuant to BCC 99.680.
- (d) Permit Renewal: The responsible party shall submit a permit renewal application form and fee at least 30 days prior to expiration of the current permit. The County Engineer or Planning Official shall review the request and the current status of erosion and sediment control at the site and shall approve the request if conditions are substantially consistent with the original Erosion and Sediment Control Plan. If the County Engineer or Planning Official determines that conditions have changed such that the original Erosion and Sediment Control Plan no longer adequately addresses erosion and sediment control needs, the responsible party shall within 14 days of such determination submit the application and materials for a new Erosion and Sediment Control Permit.

- (9) **Permit Extension.** If, during the first 11 months after issuance of an ESC Permit no ground disturbance has occurred and no County site inspections have been performed, the permittee may submit written request for an extension of the period of validity. Such request shall be submitted 30 days prior to the expiration date of the ESC Permit. There will be no fee for such an extension. The County Engineer or Planning Official may grant a one-time extension for up to one year, but shall not approve an extension if the conditions of the permit or of this code section are being violated.

- (10) **Transfer of Ownership.** Permits are non-transferable. The transfer of a property to a new owner requires that a new permit be obtained prior to the initiation or continuation of ground-disturbing activities, even though said activities may have been authorized under the permit approved for the previous owner.

(11) **Implementation Requirements.**

- (a) Erosion and Sediment Control Plan approval is required prior to clearing or grading. No ground disturbing activity requiring an Erosion and Sediment Control Permit shall be undertaken prior to County approval and issuance of the Erosion and Sediment Control Permit.
- (b) In cases where erosion or sedimentation is occurring due to ground-disturbing activities, the responsible party shall immediately install interim control measures to stabilize the condition and minimize sediment leaving the site. Within 5 working days

of the responsible party or those working on behalf of the responsible party becoming aware of the erosion, the responsible party shall provide for County review new plans, or revisions to existing plans, that demonstrate adequate erosion and sediment control. Upon County approval of the plans, the new measures described shall be immediately implemented.

- (c) The responsible party shall ensure that:
  - (A) The provisions of the Erosion and Sediment Control Plan are implemented in a timely manner;
  - (B) No visible or measurable amount of sediment has entered, or is likely to enter, the public stormwater system and surface waters;
  - (C) During active construction in rainy weather, a qualified individual shall daily inspect erosion and sediment control measures and shall ensure the control measures are maintained, adjusted, repaired and/or replaced so that they function properly without interruption, and shall ensure that immediate action is taken to correct any deficiencies.
  - (D) Eroded sediment shall be removed immediately from pavement surfaces, off-site areas, and from surface water conveyances, including storm drainage inlets, ditches and culverts. In the event that sediment enters a wetland or stream, the responsible party's qualified designee shall immediately contact Benton County Public Works.
  - (E) Water containing sediment shall not be flushed into the storm water management system, wetlands or streams without first passing through an approved sediment filtering facility, device, or other County approved structure.
  - (F) When required by Benton County, the responsible party shall maintain written records of all site inspections of erosion and sediment control measures. These shall be provided to the County upon request.
  - (G) Inspections by Benton County to certify that measures are installed in accordance with the Erosion and Sediment Control Permit shall be requested by the responsible party at the times specified in the Erosion and Sediment Control Permit.

(12) **Inspections by Benton County; Right of Entry.**

- (a) Benton County will perform the following inspections pursuant to an issued Erosion and Sediment Control Permit:
  - (A) An initial inspection of installed erosion and sediment control BMPs;
  - (B) Interim inspections as deemed necessary by the County.
  - (C) A final inspection, to verify completion of all erosion and sediment control BMPs, permanent stabilization of the site, and the required clean up of erosion and sediment control materials.
- (b) The responsible party shall obtain inspections from the County as specified in the Erosion and Sediment Control Permit and shall take immediate action to correct any deficiencies noted by the County.

- (c) The County may enter property at any time to investigate compliance with the requirements of this Code.
- (13) **Correction of Ineffective Erosion and Sediment Control Measures.** If the facilities and techniques approved by the Erosion and Sediment Control Permit are not effective or not sufficient to meet the purpose of this section, Benton County may require the following. Failure to make required corrections in a timely manner shall be a violation subject to BCC 99.680.
- (a) On-site modifications to the erosion and sediment control measures; and/or
- (b) A revised plan:
- (A) The revised Erosion and Sediment Control Plan shall be provided by the responsible party within 5 working days of Benton County notifying the responsible party and/or those conducting ground disturbing activities on behalf of the responsible party.
- (B) The responsible party shall fully implement the revised plan within 3 working days of approval by Benton County.
- (C) In cases where serious erosion is occurring, as determined by Benton County, the County may require immediate installation of interim control measures, before submittal of the revised Erosion and Sediment Control Plan.

#### **99.670 Long-Term Stormwater Management**

- (1) **Purpose:** Establish stormwater management requirements and controls to protect and safeguard the health, safety, welfare, financial investment in public and private infrastructure, and private property value, and minimize flooding in areas where structural and non-structural stormwater management is required to improve water quality and manage long term stormwater runoff from new development and redevelopment projects that result in ground disturbance of 1 acre or more.
- (2) **Applicability.** Land development within the Corvallis Federal Urbanized Area or within the Urban Fringe of the City of Corvallis or City of Philomath shall comply with the requirements of this section. Areas outside the Federal Urbanized Area and Corvallis and Philomath Urban Growth Boundaries may require structural and non-structural stormwater controls, including low-impact development (LID) methods, when deemed necessary by the County Engineer.
- (3) **Permit Required.**
- (a) The property owner shall obtain from Benton County a Stormwater Site Plan approval prior to initiation of ground-disturbing activities if both (A) and (B) are met (exceptions are listed in subsection (b)):
- (A) The ground-disturbing activities are associated with:
- (i) Construction or land uses that require a permit or other review by Benton County; and
- (ii) any of the following:
- (1) Construction of a public or private road, driveway, or structure; or

- (2) Site preparation, associated installations (such as a septic system drainfield, ground-source heat pump, or tennis court), landscaping, and other ground-disturbing activities related to new development or redevelopment construction.
  - (B) The total area of:
    - (i) ground disturbance will be:
      - (1) 1 acre or more; or
      - (2) Less than 1 acre if the ground-disturbing activity is part of a larger common plan of development or sale that will involve a total disturbed area of 1 acre or more. Benton County shall conduct a Common Plan of Development Review to determine applicability; or
    - (ii) impervious surface upon completion of the project will be in excess of 25,000 square feet.
- (b) **Exempt Activities.** The following activities are exempt from the permit requirement in subsection 3(a):
  - (A) Accepted farm practices, not including construction of buildings;
  - (B) Forest practices performed pursuant to the Oregon Forest Practices Rules;
  - (C) Excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
  - (D) Emergency measures to protect life, property, public infrastructure, or essential services, in which case a Stormwater Site Plan approval shall be obtained as soon as possible after-the-fact;
  - (E) Fish passage, stream enhancement, and wildlife habitat projects that comply with local, state and federal standards and permit requirements, provided that evidence of such compliance is submitted to Benton County Public Works prior to initiation of the activity;
  - (F) Repairs to any stormwater facility as deemed necessary by Benton County.
  - (G) Mining activities performed pursuant to applicable state permit requirements
  - (H) Activities, conducted by public agencies, that meet or exceed state or federal standards for post-construction stormwater management.
- (4) **Permit Procedures and Requirements**
  - (a) The property owner shall submit:
    - (A) Stormwater Site Plan Application form;
    - (B) Stormwater Site Plan and additional documentation deemed appropriate by the County Engineer and/or Planning Official to demonstrate compliance with this section; and
    - (C) Fee(s) established by the Board of County Commissioners.
    - (D) The Stormwater Site Plan shall be designed, stamped and signed by a licensed geologist or engineer, or other professional recognized by Benton County.

- (b) A Stormwater Site Plan approval may be issued upon determination by the County Engineer that the submitted materials demonstrate compliance with the requirements of this section. To address specific conditions of a given site, the County Engineer may require modification to the proposed Site Plan and/or to the standard requirements of this section.
- (c) Issuance or denial of a Stormwater Site Plan approval is not a land use decision and is not subject to the requirements of a land use decision including but not limited to BCC 51.535, BCC 51.605 through 51.625, and BCC 51.805 through 51.840.
- (5) **Stormwater Management Design Criteria**
  - (a) When required by subsection (3) of this section, the applicant shall implement stormwater management measures as specified in the “Benton County Stormwater Management Guide”, as interpreted by the County Engineer. Within the urban growth boundary of an incorporated city, structural and non-structural requirements will be consistent with the current standards of the pertinent city.
- (6) **Improvements Agreement.**
  - (a) Required stormwater infrastructure shall be subject to the Improvements Agreement provisions of BCC 99.905 through 99.925.
- (7) **Long-term Maintenance and Repair of Stormwater Facilities.**
  - (a) Required stormwater facilities shall be constructed by the property owner.
  - (b) Stormwater facilities shall be maintained to current Benton County stormwater facility maintenance standards.
  - (c) For a stormwater facility serving a single property:
    - (A) The stormwater facility shall be located on the property that is being served, unless an alternative arrangement is approved by the County Engineer as adequately preserving long-term viability of the facility;
    - (B) The property owner shall be responsible to maintain the proper functioning of the facility pursuant to subsection (c);
    - (C) A restrictive covenant shall be placed on the property. In the covenant the property owner shall agree to:
      - (i) not transfer the facility separately from the rest of the property, except with the express approval of Benton County;
      - (ii) maintain the facility to its original design specifications;
      - (iii) correct any functional deficiencies identified by Benton County;
  - (d) For a stormwater facility serving multiple properties the County Engineer will require the procedure in either (A) or (B) to be completed. Sole discretion in the selection resides with Benton County.
    - (A) Maintenance Fee:
      - (i) Prior to or at final development approval, or at the completion of the warranty period pursuant to BCC 99.925, the property owner or developer

shall provide a one-time payment to Benton County Public Works of the amount determined by the County Engineer to be necessary to ensure maintenance of the facility until the facility is annexed to a city and responsibility is assumed by that city. This one-time payment shall be in addition to any performance guarantee or warranty required under BCC 99.915 or 99.925.

- (ii) The property owner shall grant an easement to Benton County for access to and maintenance, repair and operation of the stormwater facility.
- (iii) Once the facility has completed the warranty period pursuant to BCC 99.925, Benton County Public Works will conduct routine maintenance on the facility as funding allows. Renovation, replacement, or repair exceeding routine maintenance will require some other local funding mechanism, such as a local improvement district.

(B) Maintenance District:

- (i) Prior to sale or transfer of lots, the property owner shall establish a local improvement district or other lawful district comprising all benefitted properties and designed to provide for the long-term maintenance, repair and/or renovation of the storm water management system.

**99.680 Enforcement, Stop-work Orders, and Penalties.** In addition to all other remedies available under Benton County Code, violations of BCC 99.650 through 99.670 shall be subject to the following enforcement procedures.

- (1) Each violation of the stormwater provisions, or any failure to carry out the conditions of any Permit approval granted pursuant to the stormwater provisions, shall be unlawful and a civil infraction subject to the enforcement provisions of Benton County Code Chapter 31.
- (2) The owner of the property upon which the violation occurs shall be responsible for mitigating resulting impacts, or, in the case of activities performed within an easement or right-of-way, the person causing the work to be performed shall be the responsible party.
- (3) In addition to and separate from those penalties available under Benton County Code Chapter 31, Benton County may enforce the following penalties:
  - (a) The Planning Official may refuse to accept any land use application or may suspend or revoke any active land use authorization.
  - (b) The Building Official shall not accept any building permit application and shall not approve occupancy of any structure on a property which is subject to a notice of noncompliance or a stop work order pursuant to this section.
  - (c) The Planning Official or County Engineer may issue a notice of noncompliance, pursuant to subsection (E) below, to the property owner requiring corrective action. If the responsible party fails to take the specified action within 24 hours, the Planning Official or County Engineer may issue a civil citation to the property owner pursuant to Chapter 31. The notice of noncompliance shall include:

(A) The location of the construction project;

(B) A description of the construction project;

- (C) A description of the non-compliance;
  - (D) A description of the corrective action(s) that shall be taken by the responsible party;
  - (E) The amount of penalty that will be imposed if corrective action is not taken within 24 hours; and
  - (F) A statement that information regarding the appeal process will be made available upon request.
- (d) The Planning Official or County Engineer may issue a stop work order, pursuant to subsection (E) below, requiring that all work, except work directly related to the elimination of a violation or necessary to correct a health or safety hazard, be immediately and completely stopped. Work shall not be resumed until such time as the Planning Official or County Engineer gives specific approval in writing. Failure to abide by the stop work order shall be grounds for the Planning Official or County Engineer pursuant to Chapter 31 to issue a civil citation to the property owner pursuant to Chapter 31.
- (A) The stop work order shall include:
    - (i) Date of order;
    - (ii) Permit number if applicable;
    - (iii) Project location;
    - (iv) Description of all violations; and
    - (v) The remedies that must be completed before work may resume.
- (e) A notice of noncompliance or stop work order shall be in writing and posted in a conspicuous location at the site. In addition, the County shall send a copy to the property owner by certified mail.
- (A) No person may remove, obscure, mutilate or otherwise damage a stop work order.
  - (B) A notice of noncompliance or stop work order shall be effective upon posting or upon oral delivery under (C) below.
  - (C) When an emergency condition exists, the Planning Official or the County Engineer or the designee of either may issue a notice of noncompliance or stop work order orally. The Planning Official or County Engineer shall then issue a written notice as described above within 24 hours of the oral order.
  - (D) Upon the property owner's completion of corrective actions necessary to bring the property into compliance with this code, the Planning Official or County Engineer shall issue a written notice of compliance to the property owner.

## **SEWAGE DISPOSAL**

**99.705 Sewage Disposal.** Each proposed dwelling, parcel, lot, or place of public occupancy shall be served by a sewage disposal system which complies with the requirements of the Oregon Department of Environmental Quality requirements. [Ord 90-0069, Ord 96-0118]

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**99.905 Improvements Agreement.** When required as a condition of development for a conditional use, partition, subdivision, ~~or~~ planned unit development, or stormwater management permit, the applicant shall execute a standard improvements agreement provided by the County Engineer guaranteeing the construction of any required public improvements. The Agreement shall be recorded to put all purchasers and interested parties on notice. The agreement shall provide that:

(1) If at any time there is a breach in the agreement, the Building Official shall withhold issuance of all building permits within the subdivision or partition until such breaches have been satisfactorily corrected.

(2) The applicant shall be responsible for installing all required improvements, including, but not limited to, streets, storm drainage, pedestrianways, water system, sewage system, etc., to the standards and specifications approved by the County Engineer and/or Board of Commissioners. All work shall be completed to the County Engineer's approval within 18 months of final plat approval, or when building permits have been issued on fifty percent (50%) of the parcels or lots, whichever comes first. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

**99.910 Review and Inspections.** Plans for public improvements required as a condition of development shall be submitted for review and approval by the County Engineer. During the installation of improvements, the County Engineer shall conduct periodic inspections of work-in-progress. The County Engineer shall charge a fee for plans review and inspection services as established by Order of the Board of Commissioners. [Ord 90-0069]

**99.915 Performance Guarantee.** (1) The applicant shall file with the County Engineer a performance guarantee to assure full and faithful performance. The guarantee shall be made in one of the following forms:

(a) An escrow of funds, irrevocable sight draft, letter of credit, franchised guarantee or other certification by a reputable lending institution. Such lending institution shall not be directly owned or controlled by the applicant. The amount of funds shall be released only upon authorization of the County Engineer.

(b) A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the County Counsel. The bond shall guarantee to the County that the financial backing is available so that all improvements will be completed and paid for within the time specified in BCC 99.905.

(2) The guarantee shall ensure that the applicant has funds committed in the amount determined by the County Engineer for the purpose of covering the cost of the improvements and repairs, including related engineering and incidental expenses. In the event of default by the applicant, the guarantee shall ensure that the County shall have, upon demand, funds to construct, complete or pay for all improvements or incidental expenses, including improvements full or partially constructed by the County, and bills which are outstanding for work done thereon by any party. [Ord 90-0069]

**99.920 Calling the Guarantee.** If the applicant fails to carry out provisions of the agreement and the County has unreimbursed costs or expenses resulting from such failure, the County shall call on the guarantee for reimbursement. If the amount of the bond or cash deposit exceeds the cost and expense incurred, the remainder shall be released. If the amount of the bond or cash deposit is less than the costs and expense incurred, the applicant shall be liable to the County for the difference. [Ord 90-0069]

**99.925 Warranty.** Upon completion of roadways and other public facilities to County standards and specifications, there shall be a minimum of ~~one~~ three year warranty period prior to County consideration of acceptance of roadway maintenance. Before this acceptance, maintenance and repair of ~~roadways~~ public facilities shall be the duty of the applicant, developer, property owner, or of the homeowners association. [Ord 90-0069]

## Chapter 100

### Planned Unit Development in Corvallis Urban Fringe

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#### 100.150 Application Requirements.

- (1) In addition to the application requirements for partitions and subdivisions contained in Chapters 95 and 97, respectively, an application for a land division within the Corvallis urban growth boundary shall contain the following information and documentation:
- (a) The location of existing structures, including building types, driveways, and off-street parking;
  - (b) The location of all Natural Features identified on the Corvallis Urban Fringe Natural Hazards Map, Riparian Corridors and Wetlands Map, and Significant Vegetation Map;
  - (c) Soils and soil characteristics, including shrink-swell potential, erosion hazard, slide potential, and any other potential limitations, using USDA Soil Conservation Service information or field studies prepared from specific site data;
  - (d) The location of any known sensitive or endangered species of flora or fauna, or significant historic or cultural resource on the property;
  - (e) Any proposed open spaces, including proposed ownership, use, and maintenance;
  - (f) The location of existing utility systems including sanitary sewer, storm sewer, drainageways, and water, where appropriate. Additionally, the location of all planned utility systems including sanitary sewer, storm sewer, drainageways, and water, shown in adopted Corvallis facility plans, and how the proposal can accommodate these facilities;
  - (g) Any proposed significant topographic changes including contours at intervals sufficient to indicate topographic conditions (generally two or five foot contours), including identification of areas subject to slide, slump, erosion or flooding hazards;
  - (h) Any measures proposed to mitigate Code-allowed impacts to natural feature areas shown on the Corvallis Urban Fringe Natural Hazards Map and/or the Riparian Corridors and Wetlands Map;
  - (i) The proposed circulation system including roads, bikeways, and access to roads. Public or private ownership of each facility shall be clearly identified. The current condition of public facilities shall be identified, as well as the proposed standard to which the facility will be improved or constructed by the applicant. Additionally, the location of all planned roads and trails shown in adopted Corvallis facility plans such as the Corvallis Transportation Plan and the Parks and Recreation Master Plan, and how the proposal can accommodate these facilities;
  - (j) The proposed plan for managing stormwater from the site, consistent with BCC 99.650 through 99.680;
  - (k) A narrative that provides:
    - (A) A phased development schedule if the development is to be phased;

- (B) A schedule for construction of all improvements;
  - (C) The proposed method for providing water supply for each parcel or lot;
  - (D) The proposed method for providing sewage disposal for each parcel or lot;
  - (E) A description of the impact of the proposed development on water, sewer, fire protection, law enforcement, schools, hospitals, solid waste disposal, and other services;
  - (F) A description of all community facilities or systems including a maintenance program for all proposed systems; and
  - (G) A copy of tentative covenants, conditions, and restrictions, if any, proposed by the applicant.
  - (H) A description of the impact of the proposed development on Natural Features shown on the Corvallis Urban Fringe Natural Hazards Map and/or Riparian Corridors and Wetlands Map, and the proposed methods for protecting these Natural Features.
- (2) The Planning Official, in the application process, may waive any of the requirements of this section where it is determined, in the judgment of the Planning Official, that the information is not necessary to properly evaluate the application. The Planning Official may require additional information deemed necessary to evaluate the application.

**100.205 Design Standards.**

- (1) **General.** An application for a Planned Unit Development shall comply with all applicable development standards of this code.

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**(5) Drainage.**

- (a) Natural drainageways necessary to convey storm water through and from the subject property shall be reserved or dedicated to the public for such purposes. The area required to be dedicated or reserved for future drainageway shall be identified as determined by the Corvallis Land Development Code.
- (b) Drainage improvements shall be designed and approved pursuant to BCC 99.650 through 99.680, and shall be constructed to the applicable City of Corvallis urban standards.
- (c) In exceptional circumstances, the approving authority may allow construction of drainage improvements to a transitional standard. Construction to a transitional standard may only be allowed if the approving authority finds that exceptional engineering considerations make it not practical to construct improvements to urban standards concurrent with the proposed development. The approving authority shall consult with the City and County Engineers in making a determination to allow a transitional standard.

- (d) If an exception is granted under 100.205(5)(b), the approving authority shall impose conditions that specify how the drainage system will be improved to the applicable urban standards with subsequent development of the property. The conditions of approval shall provide mechanisms that insure, to the greatest extent possible, that the financial obligation of present and future owners of the property to fully finance urban standard drainage improvements is met. These conditions may include but are not limited to:
- (A) Posting of a financial guarantee;
  - (B) An irrevocable petition for public improvements;
  - (C) An agreement to participate in future Improvement Districts;
  - (D) Specific provisions in covenants, conditions, and restrictions that specify the future obligation of the property owner(s) and which are attached to the property;
  - (E) Other means deemed necessary and appropriate by the approving authority.

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