

## Chapter 99

### General Development Standards

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

#### SENSITIVE LAND

**99.105 Description of Sensitive Land.** Certain land characteristics may render a site "sensitive" to development. Sensitive land includes, but is not limited to:

(1) Land having geologic hazard potential or identified by the Oregon Department of Geology and Mineral Industries in Geologic Hazards of Eastern Benton County or Preliminary Earthquake Hazard and Risk Assessment and Water-Induced Landslide Hazard in Benton County, Oregon, hereby incorporated by reference.

(2) Land containing soils subject to high erosion hazard when disturbed, or lands containing soils subject to high shrink-swell potential as identified by the USDA Soil Conservation Service in the Soil Survey of Benton County Area, Oregon, or the Soil Survey of Alsea Area, Oregon, hereby incorporated by reference, or by a successor document produced by the USDA Soil Conservation Service or a successor agency. [Ord 7, Ord 90-0069, Ord 2006-0214]

**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; Ord 2011-0240]

**99.115 Mitigating Sensitive Land Conditions.** The following guidelines shall be considered in the establishment of conditions and mitigating measures:

(1) Roads should be located in upland areas on benches, ridge tops and gentle slopes as opposed to steep hillsides and narrow canyon bottoms.

(2) Native vegetation removal or soil disturbance should be minimized on moderate and steep slopes and hillsides. If possible, avoid such activities during winter months.

(3) Surface water runoff should be minimized or provide appropriate means for handling surface water runoff.

(4) Techniques should be utilized that minimize erosion, such as protective groundcover.

(5) Engineering assessment of hazard potential should be required for land development.

(6) Geotechnical investigations should be required for roads and foundations in slide-prone areas. [Ord 7, Ord 90-0069]

**99.120 Notice of Highly Expansive Soils.** If the Planning Official or Building Official requires a site soil analysis and site recommendation report as a condition of approval for issuance of a building report for a residence, and the analysis and report identify the presence of highly expansive soils, then prior to issuance of the building permit, such official shall:

- (1) Include a copy of that report with the construction plans filed with the building permit in the Development Department; and
- (2) Record in the County Clerk Lien Record a notice containing a legal description of the property and an informational notice in the following form:

This property has been identified as having highly expansive soils. This condition may create special maintenance requirements. Before signing or accepting any instrument transferring title, persons acquiring title should check with the appropriate planning or building department.

[Ord 90-0069]

### **99.205 Protection of Corvallis Fringe Drainageways.**

(1) Proposed land divisions or the proposed development or enlargement of selected commercial, industrial or public buildings on lots or parcels within the Corvallis Urban Growth Boundary which adjoin or wholly contain drainageways identified in the Corvallis Drainageway Master Plan, hereby incorporated by reference, shall be subject to the provisions of this section. "Selected commercial, industrial, and public buildings" means those projects which would create an impervious area covered by parking, driveways, sidewalks, and the building footprint which exceeds 20,000 square feet or twenty percent (20%) of the parcel or lot size, whichever is less.

(2) Any proposal to create a parcel or lot of less than five (5) acres or to develop or enlarge a selected commercial, industrial or public building shall require the dedication to the City of Corvallis for purposes of flood protection and stormwater conveyance that portion of the drainageway contained within the subject parcel or lot. The area subject to dedication is defined as that portion of the floodway identified on the Corvallis Urban Growth Boundary Floodway Maps adopted pursuant to BCC 83.110(3).

(3) Any proposed partition subject to BCC 99.205(2) or the development or enlargement of a selected commercial, industrial or public building subject to BCC 99.205(1) shall require the dedication of an easement to the City of Corvallis. The easement shall be a minimum of twenty-five (25) feet in width, parallel to and measured from the centerline of the subject drainageway. The purpose of the easement shall be to obtain access to the drainageway for channel maintenance and preservation of riparian vegetation. In the event that an area of riparian vegetation, as evidenced by the presence of non-aquatic species which are generally dependent upon a high seasonal water table, extends beyond the twenty-five (25) foot minimum width of the easement, additional area may be required to be subject to the easement. The easement shall restrict the construction of improvements, removal of riparian vegetation, and the installation of landscaping within the subject area.

(4) Any proposed partition, irrespective of size, which adjoins or wholly contains a drainageway shall be required to record a covenant generally describing an area subject to future dedication as described in BCC 99.205(2) and (3) and reserving the described area for the dedication upon the request of the City of Corvallis. [Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2021-0304]

### **99.225 Development Activities in Wetlands.**

(1) If the subject property is situated wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory on file in the office of the Benton County Community Development Department, and if a permit from the Department of State Lands has not been issued for the proposed activity, the Planning Official shall provide notice to the Division of State Lands, the applicant, and the owner of record within five days of receipt of the following types of applications:

- (a) Subdivisions, planned unit developments.
- (b) Building permits for new structures.
- (c) Conditional use permits and variances that involve physical alterations to the land or construction of new structures.

(d) Other development permits and approvals that allow physical alteration of the land, including development in the floodplain.

(2) Benton County shall process the land use application and respond to comments from the Department of State Lands consistent with the policies and procedures of that Department. [Ord 90-0069, Ord 2006- 0214]

**99.230 Partitions and Map Amendments in Wetlands.** If the subject property for a partition, or quasi-judicial comprehensive plan map or zoning map amendment, is situated wholly or partially within areas identified as wetlands on the State-wide Wetlands Inventory, the Planning Official shall provide notice to the applicant and the owner of record of the possible presence of wetlands and the potential need for state and federal permits. The Planning Official shall provide the Division of State Lands with a copy of the notification. [Ord 90-0069, Ord 92-0092]

## **PARCEL AND LOT DESIGN**

**99.305 Parcel and Lot Configuration.** The depth to width ratio of every proposed parcel or lot shall not exceed 2.5 to 1, or the least modification of this standard when considering the location, nature of the land and the type of use contemplated. [Ord 7, Ord 90-0069, Ord 96-0118]

**99.310 Flag Lots.** The access strip to a flag lot shall be at least twenty-five (25) feet wide, and shall not exceed 300 feet in length inside an urban growth boundary or 750 feet in length outside an urban growth boundary. [Ord 7, Ord 90-0069]

### **99.315 Resource Buffer Zone.**

(1) A 300 foot setback to adjoining land in a resource zone shall be reserved on any proposed parcel or lot in a nonresource zone, if feasible. In the alternative, a setback less than 300 feet is permitted if it is the least modification of the 300 foot standard and would conform to the prevailing setbacks of the neighborhood. This standard does not apply to a yard adjoining a public road.

(2) If reservation of a 300 foot setback is not feasible, a declaratory statement shall be recorded in the County Deed Records recognizing resource use on adjacent lands. [Ord 26, Ord 90-0069, Ord 96-0118]

## **FRONTAGE**

### **99.405 General Rule of Frontage.**

(1) Every new dwelling and new structure designed for commercial, industrial or public occupancy which is not part of an existing use on a parcel or lot shall be sited on a parcel or lot which has a minimum of twenty-five (25) feet of frontage along an improved public road.

(2) Every proposed parcel or lot in a land division shall have a minimum of twenty-five (25) feet of frontage along an improved public road.

[Ord 7, Ord 90-0069, Ord 96-0118, Ord 2006-0214]

### **99.410 Frontage Exception for New Dwellings.**

(1) In the alternative to compliance with 99.405(1), a new dwelling may be allowed without the required frontage if:

- (a) The parcel or lot has no physical frontage on a public road right-of-way; or
- (b) The roadway within the adjoining public road right-of-way has not been constructed to County Secondary Road Standards in BCC 99.515(4); or
- (c) The parcel or lot is unable to achieve access to an adjoining right-of-way due to physical constraints such as terrain or water bodies, or due to legal constraints such as restrictions contained within the title records or conditions previously imposed by the County.

(2) A building permit for a proposed dwelling which qualifies for an exception pursuant to BCC 99.410(1) may be issued if:

- (a) The applicant submits evidence of an easement of record which provides for access across private property between the subject property and an improved public roadway; or
- (b) If the parcel or lot fronts or obtains access via an unimproved or substandard roadway within a public right-of-way, the applicant causes the roadway to be improved to County Secondary Road Standards in BCC 99.515(4). [Ord 90-0069, Ord 96-0118]

**99.415 Frontage Exception for Partitions.**

(1) A partition to create a parcel or lot which does not conform to BCC 99.405 may be approved if all of the following criteria are met:

- (a) Not more than six (6) parcels or lots including the proposed parcel or lot obtain access via an existing private road or street. Parcels or lots used exclusively for resource use shall not be considered;
- (b) The easement is a minimum of fifty (50) feet in width and no more than 1,250 feet in length measured from the point of intersection with a public road or street to the proposed access point on the proposed parcel or lot. The minimum easement width may be reduced below fifty feet if not more than three parcels or lots could potentially be served by the easement;
- (c) The existing private road or street intersects a public road or street which meets County Secondary Road Standards contained in BCC 99.515(4); and
- (d) The existing private road or street is improved to County Secondary Road Standards contained in BCC 99.515(4) for the total number of non-resource parcels or lots served by the easement.

(2) In lieu of compliance with BCC 99.415(1)(d), an applicant may submit for recording a covenant recognizing the requirement for improvements to the private roadway prior to the issuance of a building permit on the proposed parcel(s) or lot(s) and identifying the estimated cost of construction of improvements as determined by a professional engineer or a licensed road building contractor.

(3) The applicant must submit evidence of an easement granting to the applicant, and the applicant's heirs and successors the rights and privileges to use the easement, and must also submit a covenant binding the same to participate in the maintenance of improvements within the easement.

(4) A proposed parcel or lot zoned for and primarily engaged in a resource use shall be exempted from the provisions of this Section except that the applicant shall submit evidence of an easement of record which provides for access across private property between the subject property and an improved public roadway.

(5) A private road or street which does not comply with BCC 99.415(1)(a) and (b) shall be dedicated to the public and improved to public road standards prior to further partitioning of land using the road for access.

(6) If the proposed partition which creates a proposed private roadway is located within an urban growth boundary, the applicant shall submit for recording a signed covenant reserving the easement containing the proposed private road or street for future dedication and a non-remonstrance agreement for the formation of a local improvement district. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

**99.420** [Ord 90-0069, repealed by Ord 92-0092]

**99.430 Multiple Frontage.** Where a parcel or lot has frontage and legal access on more than one road, whether public or private, the functional classifications of each road shall be used to determine the access location. Exception can be made where factors such as terrain or other obstacles prevent obtaining practical access via the preferred roadway.

(1) Where a parcel or lot has frontage on a private road and either an arterial or collector road, the private road shall be used for access and a covenant waiving access rights to the collector or arterial road shall be entered into by the applicant.

- (2) Where a parcel or lot has frontage on a local public road and either an arterial or collector road, the local road shall be used for access and a covenant waiving access rights to the collector or arterial road entered into by the applicant.
- (3) Where a parcel or lot has frontage on a private road and a local public road, either may be used for access.
- (4) Where a parcel or lot has frontage on two local public roads, either road may be used for access. [Ord 90-0069, Ord 96-0118]

## **ROADS AND DRIVEWAYS**

### **99.505 Dedication of Right-of-Way.**

- (1) An applicant for a partition within an urban growth boundary may be required to dedicate right-of-way as a condition of approval to provide for the future development or improvement of existing and planned transportation facilities in accordance with adopted Comprehensive Plan policies and requirements.
- (2) Where an existing road right-of-way does not comply with the minimum County standard for the applicable road classification, an applicant for a partition located in a non-resource zone shall dedicate to the County sufficient right-of-way to meet the minimum County road standard along the frontage of the parcel or lot being divided. Such dedication shall occur prior to final approval of the partition. Such dedication will not be required:
  - (a) Where the applicant signs a covenant to be recorded in County Deed Records waiving building rights until such time as sufficient right-of-way is dedicated or otherwise acquired; or
  - (b) Where the partition does not result in the creation of one or more developable parcels or lots. A newly created parcel or lot shall not be considered developable if no new dwelling or use can be located on the parcel or lot without further partitioning or without first obtaining a conditional use permit.
- (3) Property acquired for public road purposes shall be surveyed and monumented by the County. [Ord 90-0069, Ord 92-0092, Ord 96-0118]

### **99.510 Road Approach Permits.**

- (1) If a new road approach is proposed, the applicant shall obtain a road approach permit prior to construction of the road approach. If the proposed road approach would connect to a State highway, the permit shall be obtained from the State Highway Division. If the proposed road approach would connect to any other public road, the permit shall be acquired from Benton County. A road approach permit is not required for the construction of an approach connecting with a private road or street.
- (2) A new road approach shall be constructed in accordance with the specifications prescribed by the County Engineer or the State Highway Division. The specifications shall be related to the use of the driveway, the nature of the adjoining public road, and the characteristics of drainage structure at the selected location.
- (3) An occupancy permit or final inspection approval required in accordance with the State Building Code shall not be issued for any structure on a parcel or lot with a road approach which was installed in violation of permit requirements, specifications or conditions. [Ord 90-0069]

**99.515 Road Design and Construction Standards.** (1) Schematic layout of proposed public and private roads or streets shall adhere to the following general guidelines:

- (a) Streets should be aligned to join with planned collector and arterial streets and/or existing streets.
- (b) Streets should be designed to respect topography and meet all applicable engineering standards.
- (c) Intersections shall be approximate or actual right angles.

- (d) Surface drainage shall be toward the intersecting street or through a drainage easement on abutting parcels or lots.
  - (e) Cul-de-sacs shall end with a minimum turning radius of 45 feet; however, for cul-de-sacs less than 200 feet in length within areas zoned for single-family residential use, an alternative design ("T", "Y", or other) or location may be approved by the County Engineer.
  - (f) Cul-de-sacs in excess of 900 feet in length within commercial or industrial areas or which serve more than 20 residential parcels or lots shall provide a secondary means of access for emergency use (fire lane).
  - (g) Dead-end streets shall be designed to connect with future streets on adjacent property. A temporary turn-around may be required.
  - (h) The County may reserve a one foot wide strip of public road right-of-way adjoining private land for the purpose of controlling access.
  - (i) Development containing more than twenty (20) parcels or lots shall contain multiple points of access into the development.
  - (j) Geometric design will follow AASHTO: A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS & STREETS, 1984 ED., standards, except when the County Engineer finds terrain or other conditions making it impossible or unfeasible to do so.
- (2) All roads within existing or proposed public rights-of-way located outside an Urban Growth Boundary shall be designed and constructed pursuant to the Rural Design Criteria identified in Table I and Figure II. Plans and construction shall be approved by the County Engineer.
- (3) All roads within existing or proposed public right-of-way located within an Urban Growth Boundary shall be designed and constructed pursuant to Urban Design Criteria identified in Table II and Figure III. Plans shall be reviewed and approved by the County Engineer in consultation with public works staff of the appropriate city.
- (4) A private road or street created by partition, or an existing private or public road which provides for access to parcels or lots created by partition shall be improved to the following County Secondary Road Standards. Required plans and construction of improvements shall be inspected and approved by the County Engineer, and the applicant shall pay an engineering review fee.
- (a) The road base shall be not less than that required to accommodate a twenty (20) foot wide road with minimum slopes for drainage improvements specified in Figure I.
  - (b) The road grade shall not exceed twelve percent (12%). Road sections under 100 feet in length which are paved may have grades to a maximum of seventeen percent (17%).
  - (c) The graveled surface shall be at least sixteen (16) feet in width for a road serving only two parcels or lots, and twenty (20) feet in width for a road serving three or more parcels or lots.
  - (d) The standards for sub-base, aggregate, compaction and vehicle turnout and turnarounds shall conform to the guidelines in Figure I.
- (5) For the protection of the public interest, the County Engineer may require improvements in excess of adopted standards, if terrain or other conditions warrant such a change.
- (6) Additional off-site improvements may be required as a conditions of land division if it is found by the Planning Official, County Engineer, Planning Commission or Board of Commissioners that the land division will have a significant impact on the level of service or maintenance costs for existing roads, drainage, or other public facilities.

[Ord 7, Ord 90-0069, Ord 92-0092, Ord 96-0118]

**TABLE I, RURAL DESIGN STANDARDS**

Local road standards are designated as RL-1, RL-2 and RL-3. Collector standards are designated as RC-1 and RC-2. Arterial standards are designated as RA-1 and RA-2.

<u>Projected Standard</u>	<u>Zones</u>	<u>ADT</u>	<u>Projected DHV</u>	<u>Minimum ROW</u>	<u>Surface Width</u>	<u>Paving Material</u>	<u>Crushed Base Equivalent</u>
RL-1	Resource	0-100	<30/hr	50 ft	18 ft	AC,PCC, APM	18 inches
RL-2	Dead end RR	0-200	<30/hr	50 ft	18 ft	AC,PCC APM	18 inches
RL-3	Resource, RR <1,000ft	100-750	<100/hr	60 ft	20 ft	4 inch AC,PCC	18 inches
RC-1	Resource	100-750	<100/hr	60 ft	20 ft	4 inch AC,PCC	18 inches
RC-2	Resource, RR	750-2000	<300/hr	60-70ft	24 ft	4 inch AC,PCC	20 inches
RA-1	All zones	1000-5000	<900/hr	80 ft	24-34ft	6 inch AC,PCC	20 inches
RA-2	All zones	>5000	>900/hr	100 ft	50-70ft	6 inch AC,PCC	24 inches
		<u>Maximum</u>	<u>Bike</u>	<u>Min. Curve</u>	<u>Design</u>		<u>Road</u>
<u>Standard</u>	<u>Shoulder</u>	<u>Grade</u>	<u>Path</u>	<u>Radius</u>	<u>Speed</u>	<u>Parking</u>	<u>Approach</u>
RL-1	4 ft gravel	17%	None	200 ft	30 mph	Limited Emergency	Shared 400ft gap
RL-2	4 ft gravel	15%	None	200 ft	30 mph	Parking Allowed	Shared 250ft gap
RL-3	5 ft paved	15%	RR Zone Class III	250 ft	30 mph	Limited Emergency	Shared 450ft gap
RC-1	5 ft paved	12%	RR Zone Class III	500 ft	45 mph	Emergency Only	Shared 400ft gap
RC-2	5 ft paved	10%	RR Zone Class III	760 ft	45 mph	Emergency Only	Shared 400ft gap
RA-1	6 ft paved	5%-8%	All zones Class III	800 ft	50 mph	Emergency Only	None
RA-2	6ft-12ft paved	4%-6%	All zones Class III	800 ft	50 mph	Emergency Only	None

**TABLE II, URBAN DESIGN STANDARDS**

Local road standards are designated as UL-1, UL-2 and UL-3. The collector standard is designated as UC-1. Arterial standards are designated as UA-1 and UA-2.

<b><u>Standard</u></b>	<b><u>Zones</u></b>	<b><u>Projected ADT</u></b>	<b><u>Projected DHV</u></b>	<b><u>Minimum ROW</u></b>	<b><u>Surface Width</u></b>	<b><u>Paving Material</u></b>	<b><u>Crushed Base Equivalent</u></b>
UL-1	UR RR2/PUD	0-200	<30/hr	50-60 ft	24 ft	AC,PCC	12 inches
UL-2	UR/PUD	0-750	<100/hr	60 ft	28 ft	AC,PCC	16 inches
UL-3	UR/PUD, C,I	0-1,000	<300/hr	60 ft	34 ft	AC,PCC	16 inches
UC-1	UR/PUD, C,I	750-2000	<600/hr	60-70ft	36 ft	AC,PCC	18 inches
UA-1	All zones	1000-5000	<900/hr	80 ft	40-52ft	AC,PCC	18 inches
UA-2	All zones	>5000	>900/hr	80-100ft	50-70ft	AC,PCC	24 inches

<b><u>Standard</u></b>	<b><u>Shoulder</u></b>	<b><u>Grade</u></b>	<b><u>Bikepath</u></b>	<b><u>Radius</u></b>	<b><u>Speed</u></b>	<b><u>Parking</u></b>	<b><u>Approach</u></b>
UL-1	Std.C&G Mountable PCC	15%	5 ft side No path	200 ft	30 mph	None	100 ft apart
UL-2	Std.C&G Mountable PCC	15%	5 ft side No path	250 ft	30 mph	One side only	100 ft apart
UL-3	Std.C&G	10%	5 ft side No path	275 ft	30 mph	Both sides if UR	100 ft apart
UC-1	Std.C&G	10%	6 ft side 4 ft path	600 ft	45 mph	None	Shared 100 ft apart
UA-1	Std.C&G	5%-8%	6 ft side 4 ft path	800 ft	50 mph	None	Left turn refuge
UA-2	Std.C&G	4%-6%	6 ft side 4 ft path	800 ft	50 mph	None	Left turn refuge

Figure I, County Secondary Road Section

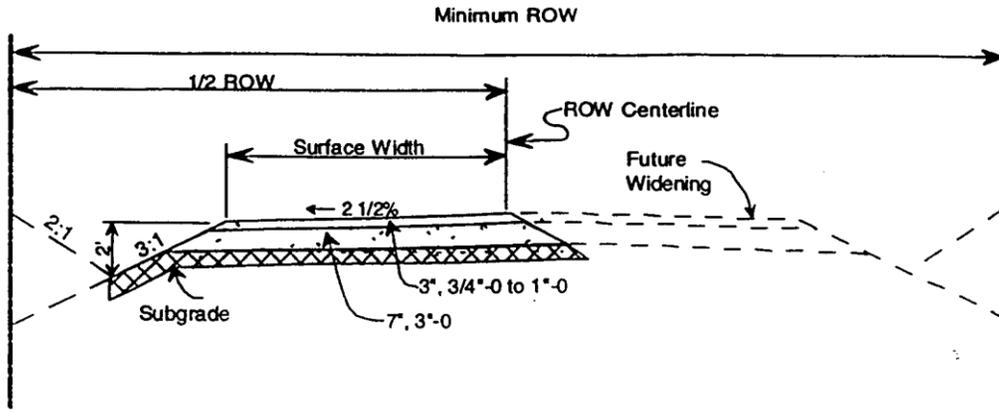


Figure II, Rural Standard Road Section

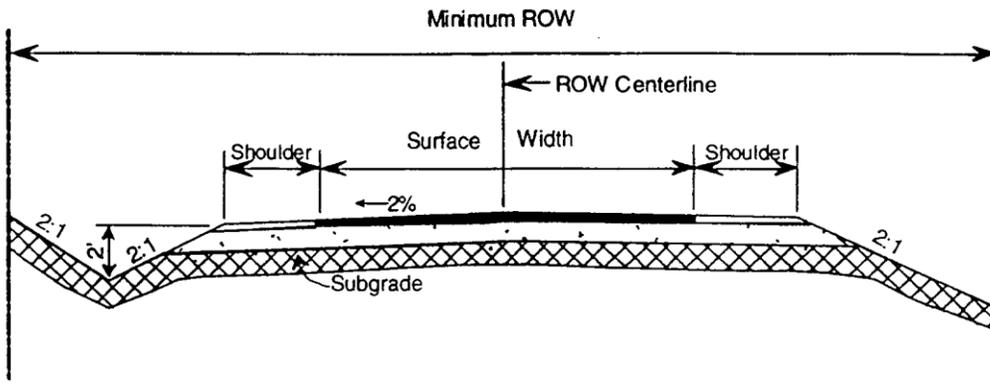
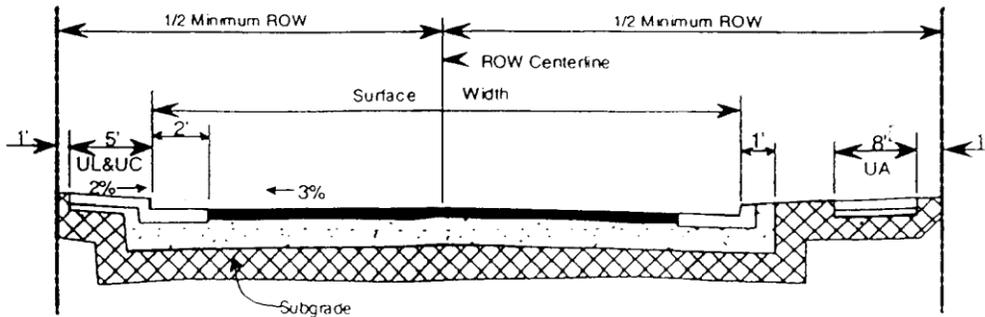


Figure III, Urban Standard Road Section



Standard 3' 3/4" 1" 1"

**99.520 Improvements in a Public Right-of-Way.** An applicant intending to construct or upgrade a roadway within a public right-of-way shall be responsible for design and installation of all improvements within the public road right-of-way. Such improvements shall commence from an existing improved public roadway and continue to the subject property and twenty-five (25) feet along the frontage of the proposed parcel or lot, or to the private driveway serving the building site, whichever is greater. Required plans and construction of improvements shall be inspected and approved by the County Engineer. [Ord 90-0069, Ord 96-0118]

**99.525 Annexation to a Road District.** The landowner of a parcel or lot contiguous to, but not within a road district, shall submit a petition to annex to said district if the applicant requests access to a public road maintained by such district. The petition to annex shall be submitted prior to final approval of a land partition or prior to issuance of a permit to construct or place a residential dwelling, or commercial, industrial, or public building. [Ord 90-0069, Ord 96-0118]

**99.530 Participation in a Future Road Improvement District.** If a proposed land division or use will result in a measurable singular or cumulative effect on the capacity of any adjoining roadway, the applicant may be required to sign and submit for recording into the County Deed Records a covenant agreeing to participate in a future road improvement district. The effect of the proposed land division or use shall be based on the character of the use, the existing road conditions including the unutilized and unreserved capacity of the roadway, and the capacity of the roadway based upon adopted roadway standards for the functional classification of the road as designated in the Comprehensive Plan. A traffic analysis shall include the most recent average daily traffic count data. The covenant shall be binding for a period not to exceed twenty (20) years. [Ord90-0069]

## **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) **“BMP”** means best management practices.
- (2) **“Certified Erosion Control Professional”** means a person certified as required by Oregon Department of Environmental Quality in any of the following program areas:
  - (a) Certified Professional in Erosion and Sediment Control (CESCL)
  - (b) Certified Professional in Storm Water Quality (CPSWQ)
  - (c) Certified Inspector of Sediment and Erosion Control (CISEC)
  - (d) Washington State Certified Erosion and Sediment Control Lead (CESCL-WA)
  - (e) Rogue Valley Sewer Services Erosion and Sediment Control Certification.
- (3) **“Common plan of development or sale”** means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one common plan. Examples include a subdivision or partition, but range far beyond; further examples are included in the Stormwater Support Documents.
- (4) **“County Engineer”** means the County Engineer or the authority designated by the Public Works Director.
- (5) **“Disturbed Area”** means land area subject to ground-disturbing activities.
- (6) **“Erosion and Sediment Control (ESC) Plan”** means a plan which fully indicates necessary land

treatment and structural measures, including a schedule of the timing for their installation which will effectively minimize soil erosion, sedimentation, and non-storm water construction related discharges.

- (7) **“Ground-disturbing Activity”** means an activity that exposes, works or redistributes soil, including but not limited to excavating, filling, stockpiling, grading, grubbing, or clearing to bare earth.
- (8) **“Impervious Surface”** means a surface that prevents or impedes stormwater from infiltrating the soil, and includes but is not limited to such elements as roads, driveways, parking lots, walks, patios, and roofs. Compacted gravel, asphalt and concrete surfaces are all considered impervious.
- (9) **“Interim control measures”** mean short term erosion and sediment control practices to remedy immediate issues as deemed necessary by Benton County.
- (10) **“MS4”** means the Municipal Separate Storm Sewer System area designated for Benton County by the U.S. Environmental Protection Agency and the Oregon Department of Environmental Quality.
- (11) **“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.
- (12) **“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.
- (13) **“Stormwater Support Documents”** means the following Benton County documents: Stormwater Management Plan (SWMP), the Best Management Practices (BMP) Manual and Appendices and the Stormwater Design Manual, or successor documents.
- (14) **“Structural Controls”** means constructed or pre-fabricated systems or facilities and other infrastructure related to long-term stormwater management.

[Ord 2011-0240; Ord 2023-0316]

### **99.655 Stormwater Support Documents**

- (1) The Stormwater Support Documents (SSD) shall contain the detailed design, review and implementation guidelines for implementing BCC 99.660 through 99.680.
- (2) The County Engineer shall:
  - (a) Have authority to interpret and apply the SSD;
  - (b) Develop and maintain the SSD in a manner that:
    - (A) Ensures that ESC and Post-Construction Stormwater Management are implemented consistent with the requirements of the Oregon Department of Environmental Quality;
    - (B) Provides applicants with a clear and objective path to compliance and, where possible, alternative options that may involve the exercise of interpretation and judgment by the County Engineer. The goal of such alternative options is to achieve the purposes identified in BCC 99.660(1) and 99.670(1) at lower cost and/or with less need for construction or long-term maintenance, and may include but are not limited to:
      - (i) Methods to reduce effective impervious surface and thereby avoid the need for a Post-Construction Stormwater Permit;
      - (ii) Methods that require less or no engineering.

[Ord 2023-0316]

## 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 , if both (A) and (B) are met. Ground-disturbing activities listed in subsection (4) of this section are exempt from ESC permitting requirements.
    - (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 0.25 acre (10,890 square feet) or more.
  - (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. Ground disturbance that is part of a common plan of development is required to comply with DEQ permitting even if the ground disturbance alone is below the threshold for requiring a Benton County ESC Permit.
- (4) **Exempt Activities.** The following activities are exempt from the permit requirement in subsection 3(a):
  - (a) Accepted farm practices;
  - (b) Construction of buildings used exclusively for agricultural purposes and located outside the MS4. The applicant shall demonstrate to the satisfaction of the Planning Official that the structure will be used only for agricultural purposes. The Planning Official may require a deed restriction acknowledging and notifying future property owners of the limitation on use of the structure;
  - (c) Forest practices performed pursuant to the Oregon Forest Practices Rules. Upon completion of such forest practices or expiration of Forest Practices authorization, a Benton County ESC Permit is immediately required unless the land has been replanted at stocking levels consistent with Oregon Department of Forestry standards;
  - (d) Excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
  - (e) 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;

- (f) Mining activities performed pursuant to applicable state permit requirements.
  - (g) Activities, conducted by public agencies, that meet or exceed state or federal standards for erosion and sediment control.
  - (h) Vegetation removal and associated activities as necessary to establish a 30-foot fire break around existing structures.
  - (i) Removal of invasive vegetation, provided the area of removal is re-established in non-invasive vegetation within one year.
- (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 and the applicable provisions of the Stormwater Support Documents. The plan shall be prepared by a certified erosion control professional, as defined in 99.650 . 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) A site plan and brief description of the proposed practices to retain sediment on the site, including sediment basins and silt traps, and a schedule for their maintenance. The location and a brief description of the surface runoff and erosion control practices to be implemented in compliance with the Stormwater Support Documents.
  - (d) The County Engineer may require submittal of a pollution prevention and protection plan, including but not limited to construction material and waste management practices to be used, temporary borrow, stockpiles and waste disposal areas, temporary debris and garbage disposal, and chemical/fuel storage areas.
  - (e) Fee(s) established by the Board of County Commissioners;
  - (f) Other documents deemed appropriate by the County Engineer and/or Planning Official.
- (6) **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 Stormwater Support Documents and the applicable Best Management Practices (BMPs) . The County Engineer may require additional or modified BMPs to address specific conditions of a given site, including but not limited to proximity to known landslides, steep slopes in the vicinity, and protected conservation areas (including but not limited to wetlands, streams/rivers, protected species habitat).
  - (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.
- (7) **Permit Period of Validity; Renewal.**
- (a) An Erosion and Sediment Control Permit shall be valid for up to two years from the date of issuance for specified approved activities.
  - (b) The responsible party shall request permit renewal if final inspection approval pursuant to subsection (11) 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.

- (8) **Permit Extension.** If, during the first 23 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.
- (9) **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.
- (10) **Implementation Requirements.**
  - (a) No ground disturbing activity requiring an Erosion and Sediment Control Permit shall be undertaken prior to approval and issuance of a Benton County 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 prior to any ground disturbance and maintained in compliance with the issued permit;
    - (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 certified erosion control professional shall inspect erosion and sediment control measures daily 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.

**(11) 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 prior to any ground disturbance;
  - (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.

**(12) 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.

[Ord 2011-0240; Ord 2023-0316]

**99.670 Post-Construction 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 and sedimentation in areas where structural and non-structural stormwater management is required to improve water quality and manage post construction runoff from new development and redevelopment projects that result in the creation or replacement (re-development) of 0.25 acres (10,890 square feet) or more of impervious surface.
- (2) **Applicability.** Land development within unincorporated Benton County shall comply with the requirements of this section.

- (3) **Permit Required.** A property owner increasing or replacing the impervious surface on a property shall comply with this section and the technical standards outlined in the Stormwater Support Documents. An individual construction that does not exceed the 0.25-acre threshold on its own shall nonetheless contribute to the cumulative threshold as described in subsection (a)(B) of this section.
- (a) An approved Post-Construction Stormwater Permit shall be obtained prior to initiation of ground-disturbing activities if both (A) and (B) are met (exceptions are listed in subsection (b)):
- (A) The plan of development or redevelopment is 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, clearing vegetation and other ground-disturbing activities related to new development or redevelopment construction.
- (B) The total area of proposed new and replaced impervious surface combined with the cumulative total of all impervious surface established since March 1, 2023, will be 0.25 acre (10,890 square feet) or more. For subdivisions and partitions, impervious surface area that will be established through construction on resulting lots/parcels shall be addressed through a Post-Construction Stormwater Permit approved prior to final plat approval, as described in subsection (4)(b).
- (b) **Exempt Activities.** The following activities are exempt from the permit requirement in subsection 3(a):
- (A) Accepted farm practices;
  - (B) Construction of buildings used exclusively for agricultural purposes and located outside the MS4. The applicant shall demonstrate to the satisfaction of the Planning Official that the structure will be used only for agricultural purposes. The Planning Official may require a deed restriction acknowledging and notifying future property owners of the limitation on use of the structure;
  - (C) Forest practices performed pursuant to the Oregon Forest Practices Rules. Upon completion of such forest practices or expiration of Forest Practices authorization, a Benton County Post-Construction Stormwater Permit is required unless the land has been replanted at stocking levels consistent with Oregon Department of Forestry standards;
  - (D) Excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
  - (E) 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;
  - (F) 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;
  - (G) Repairs to any stormwater facility as deemed necessary by Benton County;
  - (H) Mining activities performed pursuant to applicable state permit requirements;
  - (I) 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 all of the following:
  - (A) Post-Construction Stormwater Permit Application form;
  - (B) Post-Construction Stormwater site plan and additional documentation deemed appropriate by the County Engineer and/or Planning Official to demonstrate compliance with this section. Stormwater detention and treatment shall be:
    - (i) Designed in accordance with the Stormwater Support Documents, 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; and
    - (ii) Designed to accommodate the cumulative total of all impervious surface established since March 1, 2023, including the proposed additional impervious surface;
  - (C) Fee(s) established by the Board of County Commissioners.
  - (D) The Post-Construction Stormwater Management Plan shall be designed, stamped and signed by a engineering geologist or engineer licensed in the state of Oregon.
- (b) Subdivision or Partitions: The Post-Construction Stormwater site plan and permit application shall address all impervious surface that will be established by the subdivision or partition, including but not limited to roads and other infrastructure, dwellings, accessory structures and driveways. Maximum impervious surface area that may be established on each lot or parcel shall be specified and shall be memorialized in a deed restriction running with the lot or parcel or on the plat. Stormwater treatment and detention for the entire buildout of impervious surfaces shall be designed and constructed prior to final plat approval.
- (c) A Post-Construction Stormwater Permit may be issued upon determination by the County Engineer that the submitted materials demonstrate compliance with the requirements of this section and the property owner has entered into a Stormwater Management Facilities Long-Term Maintenance Agreement pursuant to subsection (6) 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.
- (d) Issuance or denial of a Post-Construction Stormwater 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.
- (e) The County Engineer may, pursuant to the Stormwater Support Documents and in response to mitigating actions proposed by the applicant, determine that stormwater detention and treatment that would otherwise be indicated pursuant to subsection (3) of this section is not required. The County Engineer shall take such actions as necessary to ensure the long-term viability of such mitigations, including but not limited to requiring a long-term maintenance agreement or similar document.

(5) **Improvements Agreement.** Required stormwater infrastructure shall be subject to the Improvements Agreement provisions of BCC 99.905 through 99.925.

(6) **Long-term Maintenance and Repair of Stormwater Facilities.**

- (a) Required stormwater facilities shall be constructed and maintained by the property owner.
- (b) Stormwater facilities shall be maintained to current Benton County stormwater facility maintenance standards.
- (c) The property owner shall enter into a Stormwater Management Facilities Long-Term Maintenance Agreement as required by the County Engineer. The Maintenance Agreement may,

at the discretion of the County Engineer, include any or all of the following:

- (A) Require the property owner to maintain and repair the stormwater facilities serving the property and located on the property or other private property;
- (B) Require proper disposal of accumulated sediment;
- (C) Authorize Benton County to enter the property to inspect and to effect emergency repairs or maintenance;
- (D) Authorize the County Engineer to require that the property owner effect necessary repairs and maintenance;
- (E) Authorize Benton County to bill the property owner for any costs incurred by the County to repair or maintain the facilities;
- (F) Authorize the County to record a lien against the property to secure the County's costs in making corrections, plus interest and penalties;
- (G) Run with the land as a covenant binding on current and future interest holders; and
- (H) Establish other terms or provisions deemed necessary by the County Engineer to ensure the long-term functioning of the facility.

(d) For a stormwater facility serving a single property:

The stormwater facility shall be located on the property that is being served. As an alternative, the applicant may propose an off-site location but shall, through submitted design materials, easements, maintenance agreements and other mechanisms, demonstrate to the satisfaction of the County Engineer that the long-term viability of the facility will be preserved at the alternate location. The County Engineer's determination will be documented in issued Post-Construction Stormwater Permit;

[Ord 2011-0240; Ord 2023-0316]

**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 County may address failure to comply with the terms of a Stormwater Management Facilities Long-Term Maintenance Agreement through the provisions of the agreement, in addition to the enforcement provisions of this section and of Chapter 31.
- (3) 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.
- (4) 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.

[Ord 2011-0240; Ord 2023-0316]

## SEWAGE DISPOSAL

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

**99.710 Site Evaluation Required.** An applicant for a land division or building permit shall obtain site suitability evaluation approval from the County Sanitarian prior to the issuance of a permit or final approval of a land partition indicating that each proposed parcel or lot is capable of accommodating a standard septic system or approved alternative system. [Ord 7, Ord 90-0069, Ord 96-0118]

**99.715 Existing System Evaluation.** If the subject parcel or lot contains an existing septic system, the applicant for any land use decision shall request the County Sanitarian to evaluate the existing septic system. If the County Sanitarian recommends a repair to the system, provisions of the repair permit shall be fulfilled prior to final approval of a building permit or a land partition. [Ord 90-0069, Ord 96-0118]

### **99.720 Existing Community/Municipal Systems.**

(1) If connection to an existing community or municipal sewage system is proposed, an applicant shall submit evidence that the service agency is mutually bound and able to serve the development.

(2) Where the parcels or lots in a proposed subdivision will be served by an existing community or municipal sewage system, the governing body of the community or municipal sewage system shall certify on the subdivision plat that a sewage disposal system will be available to the parcel or lot line of each parcel or lot depicted on the subdivision plat.

(3) Connections to community or municipal sewage systems shall be limited to uses within urban growth boundaries or approved systems within rural service centers or rural residential areas. [Ord 7, Ord 90-0069, Ord 92-0092]

**99.725 New Community/Municipal Systems.** If a new community or municipal sewage system is proposed, the applicant shall prepare and submit preliminary plans and justification for the system pursuant to provisions of this code for review and County approval. Additional review of formal plans and specifications will be required by the County Engineer, the Department of Environmental Quality and a municipality, if within an urban growth boundary. Capacity of the system shall be limited to that necessary to serve existing and permitted growth within the area. The applicant shall show proof of the long-term financial responsibility and financing for construction and operation of the sewer system in accordance with this code, except where a district or municipality has accepted the responsibility. [Ord 7, Ord 90-0069]

### **99.735 Exemption to Site Evaluation Requirement.**

(1) An applicant for a partition of land zoned for resource use, but not including a partition of land intended for non-resource use, shall not be required to obtain a site evaluation pursuant to BCC 99.710 as a condition of final approval of the partition. A site evaluation will be required prior to development of a use requiring a septic system or as a condition of a permit to establish a resource related residence or other resource related use.

(2) An applicant for a partition may petition for an exemption to BCC 99.710 requiring a septic site approval as a condition of final approval of the partition. The parcel or lot proposed for the exemption shall contain at least ten (10) acres or two and one-half (2.5) times the minimum parcel or lot size for the zone in which it is located, whichever is less. The applicant shall demonstrate to the satisfaction of the County Sanitarian that the soils on the parcel or lot are generally suitable for a standard septic system or approved alternative system. As a condition of the exemption, the applicant shall sign and submit for recording in the County Deed Records a covenant waiving residential building rights from the parcel or lot approved for the exemption. This covenant shall be terminated when the provisions set forth in BCC 99.710 are met.

(3) An applicant for a partition under BCC 64.305(2) may petition for an exemption to BCC 99.710. The applicant shall submit a statement demonstrating to the satisfaction of the Planning Official, in

consultation with County Environmental Health, that sewage disposal would not be necessary currently nor in the future for the proposed use. As a condition of the exemption, the applicant shall sign and submit for recording in the County Deed Records a covenant waiving sewage-generating building rights and uses from the parcel or lot approved for the exemption, as well as stating that no septic site approval has been obtained and the feasibility of such is unknown.

(4) Notwithstanding BCC 99.735(2), no exception shall be granted for any proposed parcel or lot situated within an area designated on the Environmental Survey Priority List as adopted by order of the Board of Commissioners. [Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2012-0244]

## **WATER SUPPLY**

**99.800 Purpose.** The provisions of BCC 99.800 through 99.850 are intended to protect the health of current and future residents of Benton County by ensuring an adequate supply of potable water for the long term. These provisions are further intended to reduce conflicts between users of groundwater and contribute to ecological sustainability. [Ord 2007-0223, Ord 2007-0224]

**99.805 Water Source.** Each proposed dwelling, parcel, lot, or place of public occupancy shall be served by one of the water sources listed in subsections (1) through (4) of this section. A water source for a new dwelling or place of public occupancy shall comply with BCC 99.810 to 99.820. A water source for a proposed lot or parcel shall comply with BCC 99.840 to 99.850.

- (1) A new or existing well or improved spring.
- (2) An existing well or improved spring that currently serves one or two other dwellings. The applicant shall secure an easement to supply water from the owner of the land on which the water source is located and to permit the maintenance of all physical improvements of the water system. Such easement shall be reviewed and approved by the County Sanitarian.
- (3) An existing public water system, if authorized by the water system's representative.
- (4) A new or expanded community water system, if approved pursuant to this code, and determined to be in conformance with the standards and plan specifications for water systems by the County Sanitarian and County Engineer. Expansion of the Camp Adair (Adair Village) water system or any new community water systems within the boundaries of Adair Village Rural Fire Protection District shall provide sufficient fire flows determined to be necessary by the district's fire chief in accordance with the Uniform Fire Code, as adopted by the District and the County. [Ord 90-0069, Ord 96-0118, Ord 2007-0223, Ord 2007-0224]

**99.810 Water Well Standards for Building Permit.** If a well is proposed for a dwelling or place of public occupancy, the applicant shall submit the following evidence that the well yields an adequate flow of microbiologically safe water for each dwelling or use:

- (1) A well log prepared by a licensed well driller and filed with the State Watermaster indicating the well is a drilled, cased well.
- (2) A water quality test prepared by an approved testing laboratory showing that the well meets the Environmental Protection Agency (EPA) standards for coliform bacteria and nitrates. If water quality does not meet the EPA standards, the Benton County Health Department must approve plans for water treatment.
- (3) A Minor Pump Test pursuant to BCC 99.845 performed within the past year. However, notwithstanding BCC 99.845(4), wells on other properties need not be tested. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 2007-0223, Ord 2007-0224]

**99.820 Spring Standards.** If a spring is proposed to be used as a water source for a dwelling or place of public occupancy, the applicant shall secure water rights for the spring or show that it is exempt, as well as design and construct improvements to protect the spring from contamination and to collect the water for distribution. This shall be done as follows:

- (1) The property owner shall obtain a water-use permit as part of the process of obtaining a water right

certificate from the Oregon Water Resources Department or obtain documentation from the Oregon Water Resources Department that the spring is exempt from the requirement for establishing water rights.

- (2) A licensed engineer shall prepare plans and specifications for spring improvements including:
  - (a) Perimeter fence.
  - (b) Surface water diversion ditch.
  - (c) Infiltration gallery.
  - (d) Spring box or collection basin including an overflow pipe and drainage valve.
  - (e) Minimum storage of 1350 gallons per household to be served..
  - (f) Filtration (at a minimum, that necessary to achieve the water quality standards in subsection (5)(b) of this section).
  - (g) Disinfection (at a minimum, that necessary to achieve the water quality standards in subsection (5)(b) of this section
  - (h) Distribution
  - (i) Additional requirements as specified by the water-use permit issued by the Oregon Water Resources Department.
- (3) The applicant shall construct the improvements according to the approved plans and specifications.
- (4) The applicant shall submit the following evidence that the spring yields an adequate flow of microbiologically safe water for each dwelling, lot, or parcel to be served.
  - (a) A flow test producing a minimum of:
    - (A) 5 gallons per minute per dwelling served if the test is performed between July 15 and October 15; or
    - (B) 10 gallons per minute per dwelling served if the test is performed between October 16 and July 14, with the condition that the test be repeated during the next July 15 to October 15 period and any necessary storage or mitigation of interference be implemented based on the latter pump test.
  - (b) A water quality test prepared by an approved testing laboratory showing that the spring meets Environmental Protection Agency (EPA) standards for coliform bacteria and nitrates (54 FR 27544-27568). If water quality does not meet the EPA standards, water treatment will be required. In addition, a water quality test for Giardia will be required if coliform bacteria is present.
- (5) The County Sanitarian may require additional testing and review as necessary to ensure the potability and sustainability of the water source. [Ord 2007-0223, Ord 2007-0224]

**99.825 Public Water System Standards.** If a public water system is proposed, the following standards shall apply.

- (1) If a new system is proposed, the applicant shall prepare and submit formal plans and specifications for review and approval by the Department of Human Services Drinking Water program, the County Sanitarian, and County Engineer in accordance with ORS Chapter 333 and OAR Chapter 448.
- (2) If connection to an existing system is proposed, the applicant shall prepare and submit formal plans and specifications for review and approval by the County Engineer and the engineer representing the water system.
- (3) If a gross density of greater than two units per acre is proposed, a minimum flow of 500 gallons per minute for fire protection with a continuous flow for a minimum of 30 minutes shall be provided.

(4) The applicant shall show proof of long-term financial responsibility and financing for construction and adoption of the water system in accordance with this code except where a district or municipality has accepted the responsibility.

(5) Where the parcels or lots in a proposed subdivision will obtain water from a public water system, whether a municipal or privately-owned water system, the governing body of the public water system shall certify on the subdivision plat that water will be available to the parcel or lot line of each parcel or lot depicted on the subdivision plat.

[Ord 7, Ord 90-0069, Ord 92-0092, Ord 2007-0223, Ord 2007-0224]

### **99.835 Exemption to Water Supply Requirements.**

- (1) An applicant for a partition shall not be required to document a water supply pursuant to BCC 99.840 to 99.850 if:
  - (a) The land is zoned for resource use and is not:
    - (A) Intended for or approved for non-resource use; or,
    - (B) Being partitioned pursuant to an approved claim under ORS 197.352 (Ballot Measure 37; 2004),
  - (b) Evidence of a water source pursuant to BCC 99.810 shall be required prior to development of a use requiring a potable water supply.
- (2) An applicant for a partition other than a series partition may petition for an exemption to BCC 99.805 to 99.825 requiring documentation of a water supply. The parcel or lot proposed for the exemption shall contain at least ten (10) acres or two and one-half (2.5) times the minimum parcel or lot size for the zone in which it is located, whichever is less. The applicant shall demonstrate to the satisfaction of the County Sanitarian that groundwater supplies in the surrounding area are of sufficient quantity and quality as demonstrated by information on the production of wells in the vicinity and other technical sources. As a condition of the exemption, the applicant shall sign and submit for recording in the County Deed Records a covenant waiving residential building rights from the parcel or lot approved for the exemption. This covenant shall be terminated when the provisions set forth in BCC 99.805 to 99.825 are met.
- (3) An applicant for a partition under BCC 64.305(2) may petition for an exemption to BCC 99.805, 99.840, and 99.850 requiring documentation of a water supply for that parcel. The applicant shall submit a statement demonstrating to the satisfaction of the Planning Official, in consultation with County Environmental Health and the County Engineer, that water would not be necessary currently nor in the future for the proposed use. As a condition of the exemption, the applicant shall sign and submit for recording in the County Deed Records a covenant waiving residential and other water-requiring building rights from the parcel or lot approved for the exemption, as well as stating that the quantity and quality of any water that might be available in the future and the impacts on adjacent property owners is unknown.
- (4) Notwithstanding BCC 99.835(2), no exception shall be granted for any proposed parcel or lot situated within an area designated on the Environmental Survey Priority List as adopted by order of the Board of Commissioners.

[Ord 2007-0223, Ord 2007-0224, Ord 2012-0244]

### **99.840 Water Supply for Land Divisions.**

#### **General**

- (1) An application for subdivision or partition shall:

- (a) Demonstrate that the water supply meets the quality standards in BCC 99.810(2)
- (b) Submit with the subdivision or partition application the testing and evaluation specified in the following table:

	<b>Aquifer Characteristics**</b>					
	Bedrock			Alluvium		
	Minor Pump Test <i>99.845(3)</i>	Major Pump Test <i>99.845(5)</i>	Hydro-geologic Study <i>99.850</i>	Minor Pump Test <i>99.845(3)</i>	Major Pump Test <i>99.845(5)</i>	Hydro-geologic Study <i>99.850</i>
<b>Partition</b> with an average parcel size:						
less than 5 acres		<b>X</b>			<b>X</b>	
5 acres to less than 10 acres		<b>X</b>			<b>X</b>	
10 acres or larger	<b>X</b>			<b>X</b>		
<b>Subdivision or Series Partition*</b> with an average parcel size:						
less than 5 acres			<b>X</b>			<b>X</b>
5 acres to less than 10 acres			<b>X</b>		<b>X</b>	
10 acres to less than 20 acres		<b>X</b>		<b>X</b>		
20 acres or larger	<b>X</b>			<b>X</b>		

\*For purposes of this section, the requirements for a “series partition” apply at the time of application for the first partition of a lot or parcel containing acreage exceeding six times the minimum parcel size.

\*\*Aquifer characteristics shall be determined from the best available data. In the absence of better data, the determination shall be made for the Willamette Basin using the map titled “Hydrogeologic Factors that Limit Groundwater Supply in the Willamette Basin, Oregon”, produced by Oregon Water Resources Department, and for other basins using the map titled “Generalized Groundwater Geology”, produced by the U.S. Geological Survey.

- (c) In areas where inadequate water supply has been documented through well repairs, dry wells, previous hydrogeologic study, or state or county designation of groundwater concern (for example a groundwater management area or limited groundwater area), Benton County may modify the testing requirements to more specifically address the evidence of inadequate supply. [Ord 2007-0223, Ord 2007-0224]

**99.845 Pump Test.** When a pump test is required by BCC 99.840, the test shall be performed to the specifications of this section.

- (1) A controlled pump test shall be performed by an Oregon licensed: well driller, pump installer, geologist, engineering geologist, or professional engineer.
  - (a) The combination of well yield and storage for residential use shall meet the following minimum standards:

Sustained Yield Determination	Gallons of Storage Required (for each dwelling to be
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(gpm for each dwelling to be served)		served)
October 16 through July 14	July 15 through October 15	
5 or more	5 or more	None
<5 (retest July 15 through October 15)	3 to 4.99	500
	2 to 2.99	1000
	1 to 1.99	1500

- (a) “Sustained yield” means the production rate at which the water level in the well remains constant for the duration of the pump test.
  - (b) The required storage may be a combination of tanks and well storage. Wells with less than a 5 gpm sustainable yield tested between October 16 and July 14 shall be retested between July 15 and October 15 to determine the storage requirements.
- (2) If interference is identified through the pump test, Benton County may require any, all or none of the following, depending on the nature of the interference and the characteristics of the well involved:
- (a) Require the applicant to modify the proposed production well, relocate it, or propose enforceable water use limitations or other mechanisms to ensure the production well does not interfere with existing wells in the observation area;
  - (b) Require the applicant to perform additional testing or monitoring to demonstrate compliance with this requirement; or
  - (c) Deny the application.
  - (d) For purposes of this section, “interference” is defined as drawdown in a senior well attributable to pumping of a junior well, where the drawdown, under normal and anticipated withdrawal rates, is likely to reduce available water in the senior well below 5 gallons per minute (July 15 through October 14) or 10 gallons per minute (October 16 to July 14).

**Minor Pump Test**

- (3) For the production well and all wells within the observation area defined in subsection (4) of this section, submit a record of:
  - (a) Static water level prior to pumping;
  - (b) The rate of sustained yield (in the production well only) and drawdown (in the other wells) at half-hour intervals during a pump test of at least four hours;
  - (c) Recovery of water level, in the subject well and closest other well drawing from the same aquifer, at half-hour intervals for four hours after pumping stops or until water level returns to 90% of pre-pumping static water level.
- (4) The observation area for a minor pump test shall consist of all wells on the subject property and adjacent properties, and all wells within 100 feet of the subject property. Testing is not required for a property in different ownership from the subject property if permission is denied by the affected property owner. The applicant shall document that a request for permission to test wells on that property was made and was rejected by the property owner.

**Major Pump Test**

- (5) At least 10 days prior to a major pump test, the applicant shall mail notification stating the date and time the pump test will be performed, to enable neighboring owners to monitor their own wells. The notification shall be mailed to owners of all properties within the distances listed in subsections (a) and (b) of this section. Properties served by municipal water supply need not be notified. The applicant shall provide documentation of such mailing.
  - (a) Properties within 250 feet of the subject property where the subject property is within an urban growth boundary;
  - (b) Properties within 1000 feet of the subject property where the subject property is outside an urban growth boundary.
- (6) Submit a record of:
  - (a) Static water level (prior to pumping) in the production well and all wells within the observation area defined in subsection (7) of this section;
  - (b) The rate of sustained yield in the production well, and drawdown in at least two observation wells within drawing from the same aquifer, recorded at half-hour intervals during a pump test of at least twelve hours;
  - (c) Recovery of water level in the two observation wells, recorded at half-hour intervals for four hours after pumping stops or until water level returns to 90% of pre-pumping static water level.
- (7) The observation area for a major pump test shall consist of all wells on the subject property and adjacent properties, and all wells within 500 feet of the subject property. Testing of wells on adjacent properties, described below, is not required for a property in different ownership from the subject property if permission is denied by the affected property owner. The applicant shall document that a request for permission to test wells on that property was made and was rejected by the property owner. [Ord 2007-0223, Ord 2007-0224]

**99.850 Hydrogeologic Study.** When a hydrogeologic study is required by BCC 99.840, the study shall be performed to the specifications of this section.

- (1) A study proposal shall be submitted to Benton County for review. The study shall not be initiated without approval of the proposal by the Planning Official in consultation with the County Engineer. The study proposal shall include sufficient detail to demonstrate the study will meet the criteria listed below.
- (2) At least 10 days prior to the pump tests associated with a hydrogeologic study, the applicant shall mail notification stating the date and time the pump test will be performed, to enable neighboring owners to monitor their own wells. The notification shall be mailed to owners of all properties within the distances listed in subsections (a) and (b) of this section. Properties served by municipal water supply need not be notified. The applicant shall provide documentation of such mailing.
  - (a) Properties within 250 feet of the subject property where the subject property is within an urban growth boundary;
  - (b) Properties within 1000 feet of the subject property where the subject property is outside an urban growth boundary.
- (3) The hydrogeologic study shall be prepared as specified in the approved study proposal and submitted to Benton County with the application for the desired land use (*e.g.*, subdivision).
- (4) The study shall:
  - (a) Bear the stamp of a geologist, engineering geologist, or professional engineer who qualifies under ORS 672, registered with the State of Oregon, and who has worked in a professional capacity in the field of groundwater resource management and hydraulics.
  - (b) Include but not be limited to:

- (A) Analysis of available information regarding:
    - (i) existing wells within 1000 feet of the boundary of the development;
    - (ii) geology of the site;
    - (iii) location of proposed wells;
    - (iv) recharge area;
  - (B) Evaluation of regional groundwater use from available mapping.
  - (C) Establishing water usage rate assumptions for the type of development proposed, and a well production rate necessary to sustain the assumed level of use. For residential subdivision, the usage rates should be on a per dwelling basis, with rates increasing as lot or parcel size increases.
  - (D) Determination of the adequacy of the aquifer to supply the needs of the proposed development, and potential future development drawing from the same aquifer, without adversely impacting adjacent wells.
  - (E) Identify the recharge area, recharge protection zones, and determine the water balance of the system to identify potential short and long term impacts of groundwater withdrawal on the aquifer.
  - (F) Pump tests for a minimum of 48 hours and up to 72 hours as determined necessary by the licensed person designing/performing the study. The pump test shall measure static water level in production and observation wells, drawdown and recharge levels at half-hour intervals at the specified production rate until 90% of static level is achieved.
  - (G) Analysis of testing data shall provide at a minimum coefficient of transmissivity, permeability, storage and the specific yield.
  - (H) Recommendations for development design, water usage limitations, monitoring, landscaping, conservation planning, etc., to mitigate impact of the proposed development on the aquifer and existing users of the aquifer. Also, a determination as to whether a water system, as opposed to individual or shared wells, would better protect the groundwater resource.
- (5) The hydrogeologic study shall be reviewed by a geologist, engineering geologist, or professional engineer that qualifies under ORS 672, registered with the State of Oregon, and who has worked in a professional capacity in the field of water resources. Benton County will select the professional who will review the study. The cost of such review shall be added to the land use application fee. The review shall include examination to ensure required elements have been completed, study procedures and assumptions are generally accepted, and all conclusions and recommendations are supported and reasonable.
- (6) Based on the review pursuant to subsection (4) above, and review by the County Engineer and County Planning Official, Benton County may do any or all of the following:
- (a) adopt some of all of the study recommendations as binding conditions of the land use approval;
  - (b) require additional conditions the County deems necessary to ensure adequate water supply for the proposed use and other users of the aquifer and to avoid aquifer overdraft;
  - (c) require the applicant to submit additional information to demonstrate adequate water supply for the proposed use and other users of the aquifer and to avoid aquifer overdraft;
  - (d) deny the land use application on the basis of inadequate water supply for the proposed use or other users of the aquifer, or aquifer overdraft.

[Ord 90-0069, Ord 92-0092, Ord 96-0118, Ord 2007-0223, Ord 2007-0224]

## **IMPROVEMENTS AGREEMENT**

**99.905 Improvements Agreement.** When required as a condition of development for a conditional use, partition, subdivision, 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; Ord 2011-0240]

**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 three year warranty period prior to County consideration of acceptance of maintenance. Before this acceptance, maintenance and repair of public facilities shall be the duty of the applicant, developer, property owner, or of the homeowners association. [Ord 90-0069; Ord 2011-0240]

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