

## Chapter 60

# Forest Conservation (FC)

### PURPOSE

**60.005 Forest Conservation Zone.** (1) The Forest Conservation Zone shall conserve forest lands, promote the management and growing of trees, support the harvesting of trees and primary processing of wood products, and protect the air, water, and wildlife resources in the zone. Resources important to Benton County and protected by this chapter include watersheds, wildlife and fisheries habitat, maintenance of clean air and water, support activities related to forest management, opportunities for outdoor recreational activities, and grazing land for livestock. Except for activities permitted or allowed as a conditional use, non-forest uses shall be prohibited in order to minimize conflicts with forest uses, reduce the potential for wildfire, and protect this area as the primary timber producing area of the County.

(2) The provisions of this Chapter are not intended to regulate activities governed by the Forest Practices Act and Rules.

(3) The provisions of this Chapter are based on the mandatory standards related to land use activities on forest land specified under Oregon state statutes, and Goal 4 of the Oregon Land Use Planning Program and the implementation requirements adopted by the Land Conservation and Development Commission pursuant to Chapter 660, Division 6 of the Oregon Administrative Rules. [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103]

**60.010** [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, repealed by 94-0103]

**60.015** [Ord 26F, Ord 90-0069, repealed by Ord 94-0103]

### APPLICATION OF THE ZONE

**60.020 Standards for Application for the Forest Conservation Zone.** The Forest Conservation Zone is applied to areas designated Forestry on the adopted Comprehensive Plan Map in compliance with Statewide Planning Goal 4 and OAR 660. This zone consists of areas containing forest soils which are not otherwise subject to an exception of the statewide planning goals. The Forest Conservation Zone is also applied to other lands necessary to preserve and maintain forest uses consistent with existing and future needs for forest management. Forest land capability is indicated by the nature and type of soil, slope, size and location of the property, the suitability of the terrain, and other similar factors. The Forest Conservation Zone is also applied to intervening lands which are suitable for forest management related uses or needed to protect forest land. [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 94-0103]

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

### **60.075 Period of Validity of Discretionary Decisions**

(1) A land use decision approving a dwelling pursuant to BCC 60.105(14) or (17), 60.108, or 60.109 shall be void four years from the date of final decision, if the development action is not initiated in that period. An extension may be granted for two additional years.

(2) A land use decision, other than a dwelling identified in subsection (1) of this section or a land division, approving a proposed development on Forest Conservation land outside an urban growth boundary is void two years from the date of final decision if the development action is not initiated in that period.

[Ord 2006-0214]

## **60.080 Soils Designations.**

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

(2) For purposes other than those described in subsection (1), the County shall use the soil designation most recently published by the Natural Resources Conservation Service, except that the County may use more detailed soils data provided it is related to the NRCS land capability classification and is prepared by a soils scientist certified for changing soil designations by the Oregon Department of Agriculture. [Ord 2001-0174, Ord 2009-0232]

## **PERMITTED USES**

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

(1) Forest operations, forest practices, and any other forest management activities authorized under the Forest Practices Act and Rules. For purposes of this section and pursuant to OAR 660-06-005(2), forest operation means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620(6).

(2) Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation, including temporary helipads. For purposes of this section and section (3) below, and pursuant to OAR 660-06-025(2)(d), "auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvest. An auxiliary use is removed when a particular forest practice has concluded.

(3) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of mineral exploration, gravel extraction and processing for construction and maintenance of forest roads in the immediate vicinity of the extraction and processing site, solid waste disposal sites, dams, reservoirs, road construction or recreational facilities. For purposes of this section and pursuant to OAR 660-06-025(2)(d), "auxiliary" is defined in BCC 60.105(2). [Ord 2001-0174; 2006-0214]

(4) Uses to conserve soil, air, and water quality and to provide for wildlife and fisheries resources.

(5) One dwelling per tract as provided for under BCC 60.108 and BCC 60.109.

(6) Farm use as defined under BCC 51.020.

(7) Local distribution of utilities (e.g. electricity, telephone, natural gas) via overhead or underground lines within existing rights-of-way, and accessory equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.

(8) Temporary portable facility for the primary processing of forest products. The facility shall not be placed on a permanent foundation and shall be removed at the conclusion of the forest operation requiring its use.

(9) Exploration for mineral and aggregate resources.

(10) Mining and processing of mineral and aggregate resources within the Surface Mining Overlay Zone (BCC Chapter 87).

(11) Towers and fire stations for forest fire protection.

(12) Widening of roads within existing rights-of-way in conformance with the transportation policies of the Comprehensive Plan including public roads and highway projects as described in ORS 215.283(1)(h) through (k). [Ord 2001-0174, Ord 2009-0232]

(13) Water intake facilities, canals and distribution lines for farm irrigation and ponds.

(14) Caretaker residences for public parks and public fish hatcheries.

(15) Uninhabitable structures accessory to fish and wildlife enhancement.

(16) Temporary forest labor camps. These accommodations for employees are intended to provide housing for forest management activities or harvesting in the immediate vicinity of the facility, will not be constructed on permanent foundations, will exist no longer than 6 months, and must comply with all pertinent Benton County health and safety requirements.

(17) Maintenance, repair, additions to, or replacement of existing legally established dwellings.

(a) To be eligible for replacement, an existing dwelling shall have:

(A) Intact exterior walls and roof structures;

(B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Interior wiring for interior lights;

(D) A heating system.

(b) Replacement must occur within one year of removal or destruction of the structure. [Ord 2001-0174]

(18) Structures accessory to a use listed in BCC 60.105(1) through (17). [Ord 2001-0174]

(19) Private hunting and fishing operations without any accommodations. [Ord 2001-0174]

(20) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a land use decision as defined in ORS 197.015(10) or subject to review under this Chapter.

[Ord 6, Ord 6B, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 95-0114, Ord 2001-0174, Ord 2006-0214, Ord 2009-0232]

## DWELLINGS IN FOREST CONSERVATION ZONE

**60.107 Purpose.** The review criteria and approval standards set forth in BCC 60.108 are drawn directly from mandatory provisions of state statutes. [Ord 94-0103]

**60.108 Dwellings in the Forest Conservation Zone.** One dwelling may be allowed on a tract in the Forest Conservation Zone under either (1) or (2) of this section, but only if the siting standards of BCC 60.405 and 60.410 are met, it complies with the requirements of the Comprehensive Plan and Development Code, and no dwellings exist or are allowed on other parts of the tract. Deed restrictions shall be required to ensure dwellings are not allowed on other lots or parcels that make up the tract.

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

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

- (a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:
  - (A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
  - (B) All or part of at least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels; or
- (b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:
  - (A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
  - (B) All or part of at least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels; or
- (c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:
  - (A) All or part of at least eleven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
  - (B) All or part of at least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.
- (d) Lots or parcels within Urban Growth Boundaries shall not be used to satisfy the eligibility requirements under this section.
- (e) Except as described in BCC 60.108(2)(f), if the tract under BCC 60.108(2)(a) through (c) abuts a road that existed on January 1, 1993, the evaluation of parcels and dwellings in the vicinity *may* be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.
- (f) If a tract 60 acres or larger described under BCC 60.108(2) abuts a road or perennial stream, the evaluation of parcels and dwellings in the vicinity *shall* be made in accordance with BCC 60.108(2)(e). However, one of the three required dwellings shall be on the same side of the road or stream as the tract, and:
  - (A) Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is, to the maximum extent possible, aligned with the road or stream; or
  - (B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.

(g) If, under (f) above, a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling. [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 94-0103]

(h) "Tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

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

(3) (a) The applicant for a dwelling authorized by subsection (1) of this section that requires one or more lot or parcel to meet minimum acreage requirements shall provide evidence that the covenants, conditions and restrictions form adopted at the end of BCC Chapter 60 as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located;

(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;

(c) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located;

(d) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section;

(e) The Planning Official shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts which do not qualify for the siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

[Ord 2001-0174, Ord 2009-0232]

#### **60.109 Lot of Record Dwellings.**

(1) A dwelling may be located on a tract that is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined in (5) below that provides or will provide access to the tract. The road shall be maintained and either paved or surfaced with rock and shall not be:

(a) A United States Bureau of Land Management road; or

(b) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(2) A dwelling authorized under this section shall comply with the following requirements:

(a) When the lot or parcel on which the dwelling will be sited lies within an area designated in the Benton County Comprehensive Plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density as provided in the Big Game Policies of the Natural Resources and Hazards element of the Plan.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.

(3) A dwelling allowed under this section may be allowed only if:

(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner:

(A) Since prior to January 1, 1985; or

(B) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(b) The tract on which the dwelling will be sited does not include a dwelling and deed restrictions shall be required to ensure dwellings are not allowed on other lots or parcels that make up the tract;

(c) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(d) The siting standards of BCC 60.405 and 60.410 are met; and

(e) The dwelling complies with the requirements of the Comprehensive Plan and Development Code.

(4) For the purposes of BCC 60.109(3) only, "Owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

(5) For the purposes of BCC 60.109, "public road" means a road over which the public has a right of use that is a matter of public record.

[Ord 95-0114; 2001-0174; 2006-0214]

**60.110** [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, repealed by Ord 94-0103]

## **CONDITIONAL USES**

**60.205 Conditional Uses Subject to Approval by the Planning Official.** The following uses may be allowed in the Forest Conservation Zone by conditional use permit approved by the Planning Official in conformance with the criteria set forth in BCC 60.220, 53.215, and 53.220.

(1) Permanent facility for the primary processing of forest products.

(2) Permanent logging equipment repair and storage.

- (3) Log scaling and weigh stations.
- (4) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.
- (5) Fire stations for rural fire protection.
- (6) Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660, Division 4.
- (7) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.
- (8) Reservoirs and water impoundments.
- (9) Cemeteries.
- (10) Home occupations authorized under a permit issued in conformance with BCC 91.205 - 91.230 and which shall be subject to the following additional standards:

- (a) It shall be operated by a resident or employee of a resident of the property on which the business is located;
- (b) It shall employ on the site no more than five full-time or part-time persons;
- (c) It shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located;
- (d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located; and
- (e) It shall be reviewed annually by the Planning Official for compliance with the Code.

- (11) One manufactured dwelling, recreational vehicle, or temporary use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or relative of the resident, subject to the standards of BCC 91.545 and 91.550 and the following:

- (a) Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under BCC 60.105(17). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
- (b) The property owner shall sign a covenant as required by BCC 60.220.

[Ord 6, Ord 22, Ord 22U, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 2001-0174, Ord 95-0114]

**60.210** [Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, repealed by Ord 94-0103]

**60.215 Conditional Uses Subject to Review by the Planning Commission.** The following uses may be allowed in the Forest Conservation Zone by a conditional use permit approved by the Planning Commission in conformance with the criteria set forth in BCC 60.220, 53.215, and 53.220.

- (1) Parks and campgrounds:

(a) Private parks and campgrounds, subject to the following.

(A) Campgrounds in private parks shall only be those allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4. For the purposes of Chapter 60 of this Code, "campground" means an area devoted to overnight temporary use for vacation, recreation or emergency purposes, but not for residential purposes, and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. A camping site may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (B) below. A "campground" shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(B) Subject to the approval of the County, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(C) The Board of County Commissioners may request that the Land Conservation and Development Commission provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in the county. Such action by the Commission is based on a determination that the increase will comply with the standards described in ORS 215.296(1).

(b) Public parks pursuant to OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(2) Firearms training facilities.

(3) Private seasonal accommodations for fishing or fee hunting operations, subject to the following requirements:

(a) accommodations are limited to no more than 15 guest rooms;

(b) only minor incidental and accessory retail sales are permitted;

(c) accommodations are occupied temporarily for the purpose of fishing or hunting during seasons authorized by the Oregon Fish and Wildlife Commission; and

(d) accommodations for fishing must be located within 1/4 mile of fish bearing Class I waters as defined under the Forest Practice Rules.

(4) New electric transmission lines with right of way widths of up to 100 feet as specified under ORS 772.210. New distribution lines (e.g. gas, oil, geothermal) with rights-of-way 50 feet or less in width;

(5) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.

(6) Expansion of an existing private airstrip or permanent helipad.

- (7) Public road and highway projects as described in ORS 215.283(2)(p) through (r) and 215.283(3).
- (8) Exploration for and production of geothermal, gas, oil and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.
- (9) Mining and processing of mineral or aggregate resources outside the Surface Mining Overlay Zone.
- (10) Destination resorts reviewed and approved pursuant to ORS 197.435 - 197.465 and Statewide Planning Goal 8.
- (11) Disposal site for solid waste approved by the Benton County Board of Commissioners and the Oregon Department of Environmental Quality together with equipment, facilities, or buildings necessary for its operation.
- (12) Television, microwave, and radio communication facilities and transmission towers.
- (13) Aids to navigation and aviation.
- (14) Extension of new water lines of a rural water supply system.
- (15) A mass gathering, defined as a gathering of more than 3000 people any part of which is held in open spaces and which is expected to continue over 120 hours in any three-month period.

(a) A mass gathering shall be allowed by the Planning Commission if:

(A) The organizer makes application for a permit to the Planning Commission.

(B) The applicant demonstrates to the Planning Commission that the applicant has complied or can comply with the requirements for an outdoor mass gathering permit of ORS 433.750.

(C) The Planning Commission shall make findings that:

(i) Any permits required by the applicable land use regulations have been granted;  
and

(ii) The proposed gathering is compatible with existing land uses and does not materially alter the stability of the overall land use pattern of the area.

(b) In reviewing an application for a permit to hold an outdoor mass gathering, the county governing body may require such plans, specifications and reports as it may deem necessary for proper review and it may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as it may deem necessary. If the county governing body determines upon examination of the permit application that the outdoor mass gathering creates a potential for injury to persons or property, the county governing body may require organizers to obtain an insurance policy in an amount commensurate with the risk, but not exceeding \$1 million. The policy of casualty insurance shall provide coverage against liability for death, injury or disability of any human or for damage to property arising out of the outdoor mass gathering. The county shall be named as an additional insured under the policy.

(c) In the event of failure to remove all debris or residue and repair any damage to personal or real property arising out of the outdoor mass gathering within 72 hours after its termination and to remove any temporary structures used at the outdoor mass gathering within three weeks after its termination, the county governing body may file suit against the organizer for financial settlement as is needed to remove debris, residue or temporary structures and to repair such damage to real or

personal property of persons not attending the outdoor mass gathering. The organizer shall be wholly responsible for payment of any fines imposed under ORS 433.990 (7).

(16) Youth camps, pursuant to OAR 660-006-0031.

[Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 2001-0174, Ord 2006-0214]

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

(a) Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

(b) Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

(c) Complies with criteria set forth in BCC 53.215 and 53.220.

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

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

In consideration for the approval by Benton County of the following use: \_\_\_\_\_, the grantee, including heirs, assigns and lessees, recognizes that such impacts are likely to occur, and agrees therefore that no action shall be brought at law or before any governmental body or agency involving the non-negligent utilization or continuation of accepted resource-management practices such as, but not limited to, the examples noted above. As used in this section, "accepted resource management practices" means a mode of operation that is authorized under the Forest Practices Act or necessary to a farm or forest operation to obtain a profit in money.

[Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 94-0103, Ord 2006-0214, Ord 2009-0232]

## **CREATION OF NEW PARCELS OR LOTS; PROPERTY LINE ADJUSTMENTS**

**60.305 Minimum Parcel or Lot Size in the Forest Conservation Zone.** The minimum parcel or lot size in the Forest Conservation Zone shall be eighty (80) acres. [Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 96-0118]

**60.315 Creation of a Parcel or Lot Smaller than the Minimum Parcel or Lot Size for a Non-Residential Purpose.**

(1) A parcel or lot less than 80 acres in size in the Forest Conservation Zone for the non-residential uses listed in subsection (4) may be approved by the Planning Official if the proposed parcel or lot will:

- (a) Not force a significant change in, or significantly increase the cost of accepted farming or forest practices on agriculture or forest lands;
- (b) Not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;
- (c) Not alter the stability of the surrounding land use patterns; and
- (d) Be the minimum necessary to accommodate the non-residential use.

(2) Where a parcel or lot smaller than 80 acres is proposed, the County shall provide the Oregon Department of Fish and Wildlife an opportunity to comment on the consistency with significant habitat values. The County shall make findings regarding consistency. The Department of Fish and Wildlife shall be provided with a minimum of ten (10) working days notice prior to the decision on the land partition.

(3) As a condition of approval, the applicant for creation of a parcel or lot smaller than 80 acres shall sign a declaratory statement to be recorded into the County Deed Records that conforms to BCC 60.220(2) and has the following two additional statements:

- (a) All rights to build a dwelling on the parcel or lot less than 80 acres are removed; and
- (b) Any future partitioning of the subject parcel or lot as it existed on March 7, 1994, will maintain a net density of at least 80 acres per parcel or lot.

(4) Pursuant to OAR 660-06-025(3)(m-o) and OAR-06-025(4)(a-o), such divisions are only allowed for the following uses:

- (a) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjustment to the well head.
- (b) Destination resorts reviewed and approved pursuant to ORS 197.435 to ORS 197.465 and Goal 8 of the State Land Use Program.
- (c) Disposal site for solid waste ordered established by the Oregon Environmental Quality Commission together with equipment, facilities or buildings necessary for its operation.
- (d) Permanent facility for the primary processing of forest products.
- (e) Permanent logging equipment repair and storage.
- (f) Log scaling and weigh stations.
- (g) Disposal site for solid waste approved by the Board of Commissioners and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.
- (h) Parks and campgrounds.
- (i) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520 and not otherwise permitted under subsection (3)(m) of this rule (e.g. compressors, separators and

storage serving multiple wells), and mining and processing of mineral or aggregate resources as defined in ORS Chapter 517.

- (j) Television, microwave and radio communication facilities and transmission towers.
- (k) Fire stations for rural fire protection.
- (l) Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660, Division 4.
- (m) Aids to navigation and aviation.
- (n) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.
- (o) Reservoirs and water impoundments.
- (p) Firearms training facilities.
- (q) Cemeteries. [Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 2001-0174]

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

(1) A parcel smaller than the minimum parcel size which contains an existing dwelling may be created subject to the following requirements:

- (a) The parcel established shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres; and
- (b) The dwelling existed prior to June 1, 1995; and
- (c) The remaining parcel, not containing the dwelling, meets the minimum land division standards for the Forest Conservation Zone or the remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone; and
- (d) The remaining parcel, not containing the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal.
- (e) As a condition of approval, the landowners shall sign a deed covenant to be recorded into the County Deed Records on the remaining parcel, not containing the dwelling, which prohibits the siting of a dwelling on the parcel. This restriction shall be irrevocable unless a statement of release is signed by the Planning Official indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural or forest land.

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

- (a) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
- (b) Each dwelling complies with the criteria for a replacement dwelling under BCC 60.105(17);
- (c) Except for one lot or parcel, each lot or parcel created under this paragraph is between two and five acres in size;

- (d) At least one dwelling is located on each lot or parcel created under this paragraph; and
- (e) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the Planning Official indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to Statewide Planning Goal 4 or unless the land division is subsequently authorized by law or by a change in Statewide Planning Goal 4.
- (f) A lot or parcel may not be divided under this subsection if an existing dwelling on the lot or parcel was approved under:
  - (A) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or
  - (B) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under statewide goal 4 (Forest Lands).
- (3) The Planning Official shall maintain a record of lots and parcels that do not qualify for the siting of a new dwelling under restrictions imposed under subsection(1)(d) of this section, or that do not qualify for division under restrictions imposed under subsections (2)(e) or (2)(f) of this section. The record shall be readily available to the public.
- (4) As a condition of approval of a land division allowed under BCC 60.320, the landowner shall sign the declaratory statement contained in BCC 60.220(2) to be recorded into the County Deed Records for the parcel containing the dwelling. This statement recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules. [Ord 98-0134; 2006-0214]

**60.325 Creation of a Parcel Smaller than the Minimum Parcel Size to Facilitate a Forest Practice.**

(1) A parcel smaller than 80 acres may be approved to facilitate a forest practice as defined in ORS 527.620. Approvals shall be based on findings which demonstrate that there are unique property-specific characteristics present in the proposed parcel that require an amount of land smaller than the minimum area requirements BCC 60.305 in order to conduct the forest practice. Parcels created pursuant to this subsection:

- (a) Shall not be eligible for siting of new dwelling;
- (b) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;
- (c) Shall not result in a parcel of less than 35 acres, except:
  - (A) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or
  - (B) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forest land; and

(d) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum lot or parcel size of the zone or the minimum size required for dwellings approved under OAR 660-006-0027(1)(e).

(2) As a condition of approval of a land division allowed under BCC 60.325, the landowner shall sign the declaratory statement contained in BCC 60.220(2) to be recorded into the County Deed Records for the parcel containing the dwelling. This statement recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules.

[Ord 2001-0174]

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

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

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

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

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

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

(a) Establishing a dwelling on the parcel;

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

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

(4) If a proposed division of land under this section results in the disqualification of a parcel for a special assessment described in ORS 308A.718 or the withdrawal of a parcel from designation as riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS 308A.371 or 308A.700 to 308A.733 before the County may approve the division. [Ord 2009-0232]

## **SITING STANDARDS**

**60.405 Siting Standards and Requirements.** All new structures allowed in the Forest Conservation Zone shall be sited in compliance with BCC Chapter 99 and the following standards designed to make

such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks, and to conserve values found on forest lands:

(1) The owner of any new structure shall maintain a primary and secondary fuel-free fire-break surrounding the structure on land that is owned or controlled by the owner, in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991 and published by the Oregon Department of Forestry.

(2) Non-residential structures shall be located at least twenty (20) feet from a parcel or lot line, except no setback is required for a structure of 120 square feet or less. A required side or rear setback for a non-residential structure may be reduced to three (3) feet if the structure:

- (a) Is detached from other buildings by five (5) feet or more;
- (b) Does not exceed a height of twenty (20) feet; and
- (c) Does not exceed an area of 500 square feet.

(3) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of any river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line.

(4) All new development approved by Benton County shall have a site specific development plan addressing emergency water supplies for fire protection which is approved by the local fire protection agency. The plan shall address:

- (a) Emergency access to the local water supply in the event of a wildfire or other fire-related emergency;
- (b) Provision of an all-weather road or driveway to within 10 feet of the edge of identified water supplies which contain 4,000 gallons or more and exist within 100 feet of the driveway or road at a reasonable grade (e.g. 12 percent or less); and
- (c) Emergency water supplies shall be clearly marked along the access route with a Fire District approved sign.

(5) All buildings shall have roofs constructed of materials defined under the Uniform Building Code as either Class A or Class B (such as but not limited to composite mineral shingles or sheets, exposed concrete slab, ferrous or copper sheets, slate shingles, clay tiles or cement tiles).

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

- (a) They have the least impact on forest operations and accepted farming practices on nearby or adjoining lands;
- (b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
- (c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and

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

Deleted: ¶

[Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 90-0069, Ord 94-0103, Ord 2001-0174, Ord 2006-0214, Ord 2009-0232]

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

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

(2) Each dwelling shall be located at least 300 feet from property zoned for resource use, or shall conform to this standard to the greatest extent practical. This requirement shall not be applied to setbacks adjacent to an improved public road except when required by an approved conditional use permit.

(3) Approval of a dwelling shall be subject to the following requirements:

(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;

(c) If the lot or parcel is more than 10 acres, the property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules.

(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

(4) The dwelling will not be sited on a slope of greater than forty (40) percent.

(5) The dwelling shall use a domestic water supply from a well or spring and a sewage disposal system as provided by Chapter 99.

(6) The dwelling shall be located upon a parcel or lot within a fire protection district or is provided with residential fire protection by contract. If the County determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the County may authorize an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fires season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(7) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

(8) The following siting standards shall apply where the residential density is greater than one dwelling per forty (40) acres in the peripheral big game range or one dwelling per eighty (80) acres in the major big game range, calculated on the basis of each 640 acre section or portion of the section within the game range:

- (a) Dwellings and structures shall be located near each other and existing roads.
- (b) Dwellings and structures shall be located to minimize habitat conflicts and shall utilize least valuable habitat areas.
- (c) Road development providing access to the dwelling shall be minimized.

(9) A dwelling shall be sited on the least valuable wildlife habitat on the property, or clustered near dwellings on other parcels or lots in order to lessen the impact on wildlife habitat and help to maintain an overall density that is compatible with wildlife habitat management. In cases where dwellings are clustered, the 300-foot setback from adjacent property zoned for resource use may not be feasible. A dwelling shall also be sited to avoid intruding unnecessarily on areas free from existing roads and dwellings. The Planning Official shall balance these standards with the required siting and permit standards elsewhere in this code to minimize adverse impacts.

(10) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(11) As a condition of approval, an applicant for a residence in the Forest Conservation Zone shall sign a declaratory statement consistent with BCC 60.220(2) to be recorded in the County Deed Records for the parcel or lot upon which the dwelling is constructed.

[Ord 6, Ord 22, Ord 26, Ord 26B, Ord 26F, Ord 94-0103, Ord 2001-0174, Ord 2006-0214, Ord 2009-0232]

EXHIBIT "A"

*Declaration of Covenants, Conditions and Restrictions Form*

Whereas, the undersigned \_\_\_\_\_ hereinafter referred to as Declarant, is owner in fee simple of the property described in Exhibit A attached hereto and incorporated by reference herein and

Whereas, the Declarant desires to declare their intention to create certain covenants, conditions and restrictions in order to effectuate and comply with the requirements of Oregon Administrative Rule (OAR 660-006-0027).

Declarant hereby declares that all of the property described on Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions and restrictions:

It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling.

These covenants, conditions and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions are located executes and records a release of the covenants, conditions and restrictions created by this instrument.

In witness whereof, the undersigned, being Declarant herein, has heretofore set their hand this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

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

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
by \_\_\_\_\_.

Notary Public for Oregon

My Commission expires: \_\_\_\_\_