

CHAPTER 37

CERTIFICATE OF INCLUSION FOR PRIVATE PROPERTY

37.100 Purpose. This chapter shall specify the procedures Benton County will use in administering the Certificate of Inclusion program associated with the Benton County Prairie Species Habitat Conservation Plan (HCP). It is the intent of this chapter that Benton County have the latitude to administer the issuance of Certificates of Inclusion in such a manner as to maximize efficient utilization of the County's limited supply of "take authorization." [Ord. 2013-254]

37.200 Definitions. As used in this chapter:

- (1) "Certificate of Inclusion" means formal documentation issued by Benton County pursuant to the Benton County HCP, authorizing take of Fender's blue butterfly habitat.
- (2) "Community Development Director" means the Benton County Community Development Director or his or her designee.
- (3) "Construction activity" means the following activities:
 - (a) Building or modifying a structure;
 - (b) Placing a manufactured or modular structure;
 - (c) Conducting a septic system feasibility study;
 - (d) Installing, altering or repairing a septic system;
 - (e) Installing plumbing, mechanical or electrical facilities;
 - (f) Constructing a driveway or parking area;
 - (g) Similar activities involving ground disturbance and/or occupation of land for purposes of establishing anything constructed, installed, or portable.
- (4) "HCP" means the Benton County Prairie Species Habitat Conservation Plan, dated December 2010, approved by the U.S. Fish and Wildlife Service (USFWS) January 2011, as amended, or successor document.
- (5) "Take authorization" means approval from USFWS to cause damage to a specific amount (in land area) of Fender's blue butterfly habitat. Benton County may in turn issue an amount of take to a private property owner through the provisions of this chapter. [Ord. 2013-254]

37.300 Certificate of Inclusion

- (1) The Board of County Commissioners shall have authority to issue Certificates of Inclusion as described in this chapter, and may delegate that authority to the Community Development Director.
- (2) Pursuant to the HCP, Benton County may choose to perform mitigation to offset the impacts of certain construction activities on certain private lands within the Fender's Blue Zone and issue to the property owner a Certificate of Inclusion, enabling specified construction activities to occur despite the activities' impacts to Fender's blue butterfly habitat. A Certificate of Inclusion issued by Benton County authorizes the applicant to effect incidental take upon the habitat of the Fender's blue butterfly pursuant to the Benton

County HCP. Benton County will mitigate the impacts to such habitat on behalf of the property owner.

- (3) A Certificate of Inclusion may be issued for a construction activity only if the activity meets all of the following:
 - (a) The construction is on land designated as “Fender’s Blue Zone” in the HCP;
 - (b) The construction is on land located outside of urban growth boundaries and designated Exclusive Farm Use, Forest Conservation, or Rural Residential on the Benton County Zoning Map;
 - (c) The construction is on a parcel or lot created on or prior to July 31, 2009, except as authorized pursuant to BCC 37.310;
 - (d) The specific land use is listed as permitted outright in the applicable chapter of the Benton County Development Code, and the “permitted outright” status of the specific use is not the result of a change to the applicable zoning or Development Code provisions that occurred after July 31, 2009.
 - (e) The construction occurs pursuant to an approved Benton County permit, land use decision, or other authorization issued by Benton County and consists of one or more of the following:
 - (A) Construction of a site-built, single-family dwelling, including an attached garage;
 - (B) Placement of a manufactured dwelling, including a temporary medical hardship dwelling;
 - (C) Construction of a residential accessory structure, such as a detached garage, shop, shed, pool, or similar structure;
 - (D) Construction of an agricultural building or structure (including those authorized by the County as exempt from building permit requirements);
 - (E) Septic system feasibility studies;
 - (F) Septic system installation, alteration, and repair;
 - (G) Installation of underground or above-ground plumbing, mechanical, or electrical facilities;
 - (H) Construction of an addition to a structure;
 - (I) Driveway construction in conjunction with a County-issued permit, only to the extent necessary to provide access for one or more of the activities or structures listed in (A) through (H) of this subsection; and
 - (f) Benton County has sufficient “take” authorization available for the proposed activity, pursuant to the current Incidental Take Permit and Implementation Agreement between Benton County and U.S. Fish and Wildlife Service.
- (4) Issuance by Benton County of a Certificate of Inclusion, including the amount of take authorized, is at the sole discretion of Benton County. Benton County may choose to not issue a Certificate of Inclusion for any reason.
- (5) Issuance or non-issuance of a Certificate of Inclusion is an administrative function and not a land use decision.

- (6) To obtain a Certificate of Inclusion, the property owner shall submit to the Community Development Department a detailed site plan showing all proposed areas of construction activities including access to the site, and a calculation of the area of such activities in square feet.
- (7) If Benton County determines to issue coverage, the County will prepare a Certificate of Inclusion and documentation of the area covered by the Certificate. Signature by the property owner and the Community Development Director is required.
- (8) A Certificate of Inclusion is specific to a given permit or authorization issued by Benton County.
- (9) The property owner may request revisions to a Certificate of Inclusion if modifications in the area of proposed impact become apparent through the construction process. Issuance of a revised Certificate of Inclusion is at Benton County's discretion.
- (10) The applicant is covered for liability under the federal Endangered Species Act for only those activities and areas specified in the issued Certificate of Inclusion.
- (11) Failure to adhere to the area covered by the Certificate of Inclusion may result in denial of the final building inspection and/or voiding of the building permit. [Ord. 2013-254]

37.310 Certificate of Inclusion for Parcels and Lots Created After July 31, 2009.

Partitions or subdivisions of land partially or fully within the Fender's Blue Zone and platted after July 31, 2009, may be eligible for a Certificate of Inclusion, pursuant to BCC 37.300 and the following:

- (1) From a parent parcel or lot legally existing on July 31, 2009, one parcel or lot resulting from the first partition or subdivision of the parent parcel or lot shall be eligible for coverage pursuant to 37.300.
- (2) If the property partitioned or subdivided after July 31, 2009, contains structures or other development, the eligibility for Certificate of Inclusion coverage carries only to the resulting parcel or lot containing the primary structure. For example, if a parent parcel containing a dwelling and an agricultural building is divided such that the two structures are located on separate parcels, the Certificate of Inclusion coverage carries to the parcel containing the dwelling.
- (3) If a property is partitioned or subdivided after July 31, 2009, such that the parcel or lot containing the primary structure contains no land within the Fender's Blue Zone, then the applicant may designate a different parcel or lot to receive the Certificate of Inclusion coverage.
- (4) If a property partitioned or subdivided after July 31, 2009 is vacant, or if more than one resulting parcel or lot will contain a primary structure, then the Certificate of Inclusion coverage carries to only one of the resulting parcels or lots which shall be designated by the property owner at the time of application for preliminary approval of the partition or subdivision pursuant to the Benton County Development Code.
- (5) Parcels or lots other than the single parcel or lot to which the Certificate of Inclusion coverage carries from the parent parcel are not eligible for coverage. [Ord. 2013-254]