

LAND USE AND BUILDING CONDITIONS, COVENANTS, AND RESTRICTIONS TO APPLY TO MARY'S RIVER ESTATES AND MARY'S RIVER ESTATES FIRST ADDITION

AMENDED AND RESTATED January 21, 1999

BACKGROUND

The Mary's River Estates Subdivision (roughly some properties on Mary's River Estates Road and those properties bordering Daisy Drive) was subdivided and platted in 1967 by Valley Farms, Inc. and Oregon Corporation (Benton County Plat Book 6, p. 78). In 1968 the same corporation subdivided and platted the adjacent area known as Mary's River Estates First Addition (roughly all properties bordering Columbine Drive, Iris Circle, Queen Anne Drive and Tansy Drive) (Benton County Plat Book 6, p. 83). At those times, the corporation declared for the subdivisions, Conditions, Building and Use Covenants, Restrictions and Utility Easements (CC&R's) to ensure the long-term value, safety and overall integrity of the area. Subsequently, these CC&R's have been renewed so as to remain in effect in perpetuity as documented in Benton County Deed Records:

- Mary's River Estates CC&R's: Microfilm Record # 4406 Dated 9-1-67
- Mary's River Estates First Addition CC&R's: Microfilm Record # 12376 Dated 2-19-69
- Renewal of CC&R's: Microfilm Record # 84267 Dated 8-26-77
- Renewal and Automatic Renewal of CC&R's: Microfilm Record # 97313-88

Separate from the CC&R's but related to land use and character of the area, in 1990 the Benton County Commissioners passed ordinance No. 90-0073 which changed the zoning in the area from Rural Residential two acre minimum (RR-2) to Rural Residential five acre minimum (RR-5) for the Mary's River Estates Subdivisions. The same ordinance amended the County Zoning Map to remove the Manufactured Housing Zoning Overlay (/MH). (Microfilm Record # 124839-90 Dated 8-11-90)

The subdivisions, as in all of Benton County, have experienced dramatic growth and development that could have significant impacts on the character of the area. Therefore, the following revisions are to update, amend and restate the CC&R's to assure continued protection:

A. PURPOSE OF COVENANTS, CONDITIONS AND RESTRICTIONS

These Covenants, Conditions and Restrictions(CC&R's) are for the benefit of the property and its present and subsequent owners, the intent being to enhance and protect the value, desirability and attractiveness of the property. They therefore are transferred with the land, are legally enforceable, and come with the Deed and Title as property is purchased, sold and repurchased. They both benefit and place limitations upon all owners and future owners of said property or any interest therein.

The CC&R's are to secure for each site owner the full benefit and enjoyment of his/her home and property, with no greater restrictions upon the free and undisturbed use of his/her site than is necessary to ensure the same advantages to the other site owner.

B. CONDITIONS and COVENANTS

B.1 Subdivision and Easements

B.1.1. No lot shall be subdivided into parcels or tracts of less than five (5) acres, to conform with Benton County Rural Residential 5 acre minimum zone (RR 5 as defined by Benton County Ordinance 90-0073 [Microfilm124839-90] effective 8/11/1990). "Lot" means one of the numbered parcels on the recorded maps of the subdivisions. "Subdivision" means all land, lots or building sites located within Mary's River Estates and Mary's River Estates First Addition as recorded in the Plat records of Benton County.

B.1.2. An easement ten (10) feet in width is hereby reserved along each of the lot lines for the installation, operation, maintenance and repair of utility lines (both above and below ground), to serve the lots in this subdivision, said ten (10) foot easement being five (5) feet on each side of each lot line.

B.2 Land Use and Building Type

No lot shall be used except for residential purposes, and no structure shall be erected and placed thereon other than a single family dwelling unit with garage, stable or sheds, and other convenient outbuildings.

B.3 Building Construction

Only site built dwellings, including log/kit homes, shall be placed on each lot as subdivided so as to conform with and be consistent with the character of the area, defined as the general characteristics of the dwellings and habitat of the subdivision as a whole.

B.4 Temporary Residences

No trailer, shack, tent, partially completed residence, basement of an incomplete house, outbuilding or any kind of garage shall be used as a residence temporarily or permanently. No manufactured home, mobile home, trailer home, vehicle or other home which was constructed and had plumbing, electrical wiring and sanitation facilities installed at another location shall be moved onto sites or used for dwelling purposes except during a twelve (12) month period during construction of a permanent dwelling.

B.5 Dwelling Size

No dwelling shall be erected or maintained on said premises having a ground floor square feet area of less than twelve-hundred (1200) square feet, which area shall be exclusive of any attached garage, porch or patio.

B.6 Construction Details

No dwelling shall be erected or maintained on said premises with a roof under the minimum pitch of 5/12. Roofs shall be constructed of Class A fire resistant materials.

B.7 Codes

8.7.1. The installation of all plumbing, electrical wiring and sanitation facilities shall fully comply with the requirements of the rules and regulations of the Benton County and Oregon State codes respectively. Construction materials and techniques shall be consistent with the Benton County Building Department requirements.

8.7.2. All dwellings, outbuildings and driveways shall comply with Philomath Rural Fire District requirements and codes, as well as with County and State Forestry Department and all other applicable legal requirements for fire safety.

B.8 Construction Period

The construction of any buildings upon said premises shall be completed within one (1) year from date of commencement of such construction.

B.9 Liability and Damage

Each owner shall maintain a suitable policy of casualty and liability insurance upon his or her dwelling and lot. In the event that any house or outbuilding is damaged through casualty or loss, the owner shall repair, restore or demolish such property as soon as it is reasonably practical under the circumstances but not in any event to exceed one (1) year from the date of loss.

B.10 Setbacks

No structure shall be erected or maintained on said premises nearer than fifty (50) feet to any street or road line, nor closer than twenty-five (25) feet to any other exterior boundary of the property owned by the person constructing or maintaining said structure.

B.11 Mary's River Estates Road District

The sixty (60) foot road on which each of the lots affected hereby fronts is in fact a public road; however, until maintenance is provided by Benton County, the owners of said lots shall share in the cost of the maintenance of said road as apportioned by the Benton County Tax Assessors Office and the Road District.

B.12 Timber and Habitat

B.12.1. No Commercial cutting of timber shall be conducted or allowed on or from the premises.

B.12.2. Reasonable cutting of timber is permitted for a building site. A goal, however, is to maintain the natural habitat and character of the area. Where necessary, the natural vegetation may be removed for the construction of specific property improvements such as outbuildings, driveways, for reasons of safety in the area of the homesite, and for the planting of gardens and small orchards. Wherever possible the natural vegetation shall be preserved to assure privacy for property owners, to serve as a buffer against noise, and to continue to serve as natural habitat for wildlife.

B.13 Mining

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tunnels, mineral excavations or shafts be permitted upon any lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot with the exception of equipment erected temporarily for creation of wells for drinking water.

B. 14 Animals

No animals, livestock or poultry shall be raised, bred or kept on any lot except for 4-H animals and household pets. No horses or cows shall be kept on a tract consisting of less than two-and-one-half (2 1/2) acres.

B.15 Rubbish and Nuisances

B. 15. 1 No lot shall be used or maintained as a dumping grounds for rubbish. Trash, garbage or animal waste shall be kept only in containers. Burn piles and/or barrels shall conform to Philomath Rural Fire District schedules and procedures.

B. 15.2 No noxious or offensive activity, including but not limited to the unreasonable discharge of firearms or excessive use of fireworks, shall be carried on upon any lot nor shall anything be done thereon which may or may become an annoyance or nuisance to the neighborhood.

B. 16 Parking

No person shall park overnight any car, boat, trailer or other moveable vehicle upon any street, road, shoulder or byway serving the subdivision. Wrecked or unlicensed automobiles of any kind shall not be permitted on any lot unless they are out of sight behind a fence in keeping with the character of the area.

C. ADMINISTRATIVE PROVISIONS

C. 1 Duration

[NOTE: The current CC&R's include the following addendum: In 1988, the majority of property owners voted that the CC&R's will be "automatically renewed every ten years unless amended by a majority vote of the property owners at any time."]

C.1.1 These conditions and building and use restrictions shall remain in full force and effect until ten (10) years from date, and will thereafter be automatically renewed every ten (10) years unless amended by a majority vote of the property owners voting at any time.

C.2 Severability

In the event that any provisions hereof shall be, in any court of competent Jurisdiction, held or decreed to be invalid or unenforceable, such fact shall not affect the validity or enforceability of any of the other provisions hereof.

C.3 Nonwaiver

Failure by the declarant or any property owner or their legal representatives, heirs, successors or assigns to enforce any condition, restriction, or covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter, except as set forth herein.

C.4. Conflict of Provisions

In the event of a conflict between the provisions of this declaration and agreement and the governing zoning and building codes, or those of any other governmental body, the more restrictive shall govern.

C. 5 Enforcement

In the event the grantees or their successors in interest in the above described premises or any part thereof shall fail to keep, perform and maintain any of the within and above restrictions or conditions, then any injured property owner or owners are given the right to bring suit against any violator thereof for damages, and besides rendering judgment for damages, costs and attorney's fees, the court shall order for the discontinuance of said breach of the conditions and restrictions.

C. 6 Exemption

Current uses in conformity with the previous Conditions, Covenants and Restrictions shall be exempted from compliance with these newly amended CC&R's provided they are maintained at the same level and extent of usage.