



Goal One is Citizen Involvement

MEMORANDUM

TO: Commissioner Bill Fleenor

FROM: Jim Just

DATE: January 26, 2010

RE: Eliminating “developed and committed” exceptions in Lane County

Dear Commissioner Fleenor:

Commissioner Dwyer has expressed a desire to eliminate the opportunity for further “developed and committed” exceptions in Lane County, as the 30+ years following the adoption of the statewide planning goals and acknowledgment of Lane County’s RCP should have sufficed to allow for all such exceptions to be initiated, reviewed, and approved if appropriate.

ORS 197.732(2) authorizes a local government to adopt an exception to a goal if: (a) the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal; or (b) the land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable. “Developed” and “committed” exceptions are also authorized by statewide planning Goal 2 Part II (a) and (b). Neither the statute nor Goal 2 *require* a local government to review or approve an exception.

If Lane County as a matter of policy believes that the time that has passed since initial acknowledgment of the RCP has been sufficient to allow adequate opportunity for property owners to obtain developed and committed exceptions where appropriate, that policy choice could be effected by adopted the following amendments to the RCP through the post-acknowledgment plan amendment (PAPA) process.

Also for the Board’s consideration, this memo identifies amendments necessary to eliminate further possibility for the conversion of lands designated as agricultural lands or forest lands to residential use by establishing that they are “nonresource” lands because they do not meet the Goal 3 definition of “agricultural lands” or the Goal 4 definition of “forest lands”.

I. Proposed amendments to the RCP and Lane Code to restrict new “developed” and “committed” exceptions

A. Goal 2 Land Use Planning Policies

1. New language added to Goal 2 Policy 9:

9. Exceptions to LCDC Goals (i.e. a determination that it is not possible to apply an appropriate goal to a specific property) shall be in accordance with OAR 660-04-000 (Goal 2 Exception Process) and shall only be taken at times of Plan adoption or amendment. **As of January 1, 2010, Lane County will no longer approve “developed” and “irrevocably committed” exceptions outside of urban growth boundaries or unincorporated communities.**

(c): 2. New language to be added as the final paragraph to Goal 2 Policy 11 (a), (b), and

As of January 1, 2010, Lane County will no longer approve “developed” and “irrevocably committed” exceptions outside of urban growth boundaries or unincorporated communities.

3. Policy 12 amended as follows:

~~12. Changes to Plan designations for developed and committed exception areas outside of a Community designation shall be accomplished through the County's Plan Amendment Procedure.~~ **Lane County does not consider or approve “developed” and “irrevocably committed” exceptions outside of urban growth boundaries or unincorporated communities.**

B. Amendments to Goal 3: Agricultural Lands policies

1. Amend Policy 7:

7. Some agricultural land in the County is not suitable or available for agricultural use by nature of being ~~built upon, committed to or~~ needed for nonagricultural uses by using applicable comprehensive plan policies and the exceptions process of LCDC Goal 2, Part II.

C. Lane Code amendments

1. Amend LC 16.400(8)(a)(i) as follows:

(i) Minor Amendment. An amendment limited to the Plan Diagram only, **including those requiring an exception to Statewide Planning Goals.** ~~and, if requiring an exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.~~

2. Proposed amendments to the RCP to restrict new “nonresource land” designations

A. Amendments to Goal 2 Land Use Planning Policies

1. Replace Policy 18:

~~18. Where lands are not farm and forest lands, they may be designated on the plan diagram as rural residential or as parks and recreation, provided:~~

~~a. Detailed and factual documentation has been presented indicating that the subject lands are not farm and forest lands as defined by Statewide Planning Goals #3 and #4.~~

~~b. An exception to any of the Statewide Planning Goals is not required.~~

~~e. Small isolated non-resource tracts surrounded by farm and forest lands shall be discouraged if such non-resource designation would create compatibility problems.~~

~~d. The Rural Residential Designation would be consistent with other Comprehensive Plan Policies.~~

18. Removal of lands from a resource (agricultural lands or forest lands) designation requires an exception to Statewide Planning Goal 3 and Goal 4.

2. Delete Policy 19:

~~19. Residential densities for non-resource lands shall be one residence per five or ten acres and shall be determined through consistency with other plan policies and the following criteria:~~

~~a. Existing development pattern and density of any adjacent committed areas;~~

~~b. Subsurface sewage disposal suitability;~~

~~c. Domestic water supply availability;~~

~~d. Access;~~

~~e. Public service;~~

~~f. Lack of natural hazards;~~

~~g. Effect on resource lands.~~

GOAL ONE COALITION



Goal One is Citizen Involvement

MEMORANDUM

TO: Commissioner Bill Fleenor
FROM: Jim Just
DATE: January 26, 2010
RE: Needed RCP Goal 4: Forest Land policy amendments

Dear Commissioner Fleenor,

Below is a brief discussion of issues regarding Lane County RCP forest land policies and of issues related to problems in distinguishing between “nonimpacted forest” (F1) lands and “impacted forest” (F2) lands.

Addressing and resolving these issues will require amending the Lane County Rural Comprehensive Plan amendments using the PAPA process.

I. Issues related to Forest Lands zone changes (typically from F1 to F2)

There are two ways to obtain a zone change from F-1 to F-2: either directly applying for a zone change via LC 16.252, or through a conformity determination. Whichever process the applicant seeks to use, he/she will end up at Goal 4, policy 15.

1. Conformity Determinations under RCP Goal 2, Policy 27

The previous language of Goal 2, policy 27 was better than the current version:

Old Version (cited in Just v. Lane County, 50 Or LUBA 399 (2005)):

“Errors and Omissions. Lane County will * * * process applications to correct identified errors or omissions in the [RCP] and Zoning Plots resulting from the [RCP] and Zoning Plots not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the [RCP] and Zoning Plots. * * *

“a. Circumstances qualifying for consideration by the Board of Commissioners under the Errors and Omissions Policy may include one or more of the following:

“* * * * *

“ii. Failure to zone a property [F-2], where maps used by staff to designate the property [F-1] did not display actual existing legal lots adjacent to or

within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone[.]”

New Version:

“Conformity Determinations. Lane County will * * * process applications to correct identified plan or zoning designations in the [RCP] and Zoning Plots resulting from the [RCP] and Zoning Plots not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the [RCP] and Zoning Plots. * * *

“a. Circumstances qualifying for consideration by the Board of Commissioners under the Conformity Determinations Policy may include one or more of the following:

“* * * * *

“ii. Inappropriate Nonimpacted Forest Land (F-1, RCP) zoning designation, where criteria of RCP Forest Land Policy 15 indicate that Impacted Forest Land (F-2, RCP) zoning designation is suitable.”

This amended language in Goal 2, Policy 27.a.ii. creates a circular process. One does not know whether an applicant can obtain a conformity determination until one has already determined, through application of Goal 4, Policy 15, that F-2 is the appropriate zone. The trigger for the conformity determination regarding F-1 and F-2 zones must be changed.

Proposed new language:

“ii. Where an applicant or the county demonstrates that maps used by staff to initially designate the property F-1 did not accurately display the actual existing parcelization adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone. For purposes of this conformity determination, the characteristics in Goal 4, policy 15 shall be applied to the properties as they existed when the property was initially zoned.”

This process is only used for demonstrated errors in the zoning. The person or entity seeking a zone change must first demonstrate that the county made an error based on inaccurate information.

2. Zone changes applying Goal 4, Policy 15

Policy 15 is used to change a property from F-1 to F-2. In the conformity determination scenario, the county would look at the time when the zoning was initially imposed and determine what the property should have been zoned at that time.

In the 16.252 scenario, the policy 15 characteristics are applied in present day. It is not necessary to make a determination that the F-1 zone is in error, only that the F-2 zoning would be appropriate. My thought would be to create a higher burden for changing the zone from F-1 to F-2. Perhaps not so high that you have to demonstrate that the F-1 zone is wrong, but more than that the characteristics “more closely correspond” to the characteristics of F-2. The current language is just way too discretionary. I like your proposed language for requiring a “majority” of the characteristics to favor F-2 in order to change the zoning. However, I still think the characteristics are still too ambiguous and discretionary. I am going to propose some language that is how I see the current characteristics ...

Goal 4, Policy 15.a: For purposes of this policy, the terms “tract” and “contiguous” shall have the meanings provided in 16.090. The term “predominantly” means greater than 50%. What constitutes a tract shall be determined by the ownership of property as it existed on January 1, 2010.¹

Non-impacted Forest Land Zone (F-1, RCP) Characteristics:

- (1) Any tract zoned F-1 that is at least 80 acres in size shall remain zoned F-1.
- (2) Contiguous tracts are predominantly (>50% in area) 80 acres or larger in size.
- (3) Subject tract is not developed by residences or non-forest uses.
- (4) Subject tract is contiguous predominantly to properties (>50% in area) that are not developed by residences or non-forest uses.
- (5) Subject tract is presently or has a history of being managed for the production of commercial tree species.
- (6) Contiguous properties are predominantly (>50% in area) utilized for commercial forest or commercial farm uses.

Impacted Forest Land Zone (F-2, RCP) Characteristics:

- (1) Any tract that is less than 20 acres and is not contiguous to any other F-1 zoned properties shall be zoned F-2.
- (2) Contiguous tracts are predominantly (>50% in area) less than 80 acres in size.
- (3) The subject tract or tracts are predominantly (>50% in area) developed by residences or non-forest uses.
- (4) The subject tract or tracts are contiguous to properties that are predominantly (>50% in area) not developed by residences or non-forest uses.
- (5) The subject tract or tracts are not presently and do not have a history of being managed for the production of commercial tree species.
- (6) Contiguous properties are predominantly (>50% in area) utilized for commercial forest or commercial farm uses.

3. Amend LC 16.090 definition of “tract”

The definition of “tract” in 16.090 currently provides:

“A lot or parcel as defined in LC 16.090.”

¹ Some language like this is important so owners can't go transferring ownerships to satisfy the F-2 characteristics.

This is not consistent with state statute or with how the term is used in various places in the code and plan. A code amendment to correct the definition of “tract” is long overdue.

The definition, of “tract” in statute (ORS 215.010) and administrative rule (OAR 660-033-0020(10) and 660-006-0027(5)(a) provides:

“one or more contiguous lots or parcels under the same ownership.”

LC 16.090 should be amended to reiterate the statutory and rule definition.

4. Delete LC 16.090 and LC 13.010 definitions of “contiguous”

The current LC 16.090 and LC 13.010 definitions of “contiguous” provide:

Contiguous. Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous.

The purpose of including the “greater than eight feet in length” language in the definition is murky, and is inconsistent with the dictionary definition and the common understanding of word “contiguous.”

The LC 16.090 definition of “contiguous”, if applied in the context of template dwellings, is not consistent with state law or other applicable provisions of Lane Code.

Template dwellings are limited to one per “tract”. ORS 215.750(4), OAR 660-006-0027(1)(i) and (4), and LC 16.21(5)(a) and (e) provide that a template dwelling may be allowed only if no other dwellings exist on a tract, and if no other dwellings are allowed on other lots or parcels making up a tract and deed restrictions so providing are established.

ORS 215.750(6)(b), OAR 660-006-0027(3)(b), and LC 16.211(5)(c) address the situation where a road crosses a track, and require that at least one of the three required dwellings be on the same side of the road as the proposed dwelling.

The definition of tract found in OAR 660-006-0027(5)(a) and LC 16.211(5)(a) and the language of OAR 660-006-0027(3)(a) clearly contemplate that a road may cross a tract. The road thus cannot interrupt the tract or divide one tract into two.

Applicable provisions of statute, administrative rule and Lane Code clearly contemplate that a road may cross a tract and does not necessarily form the boundary of a tract.

LandWatch and Goal One suggest the simplest way to address this problem is to delete the LC 16.090 definition of “contiguous.”

II. Other RCP Goal 4: Forest Lands inconsistencies with state law

A review of Lane County’s forest land provisions and other related provisions has revealed some inconsistencies with applicable state law.

Adoption of the amendments discussed below would require using the PAPA process, with notice to DLCD, notice to the public, and public hearings before the Planning Commission and Board of Commissioners.

Recommended Amendments to Rural Comprehensive Plan Goal 4: Forestry Policies

1. Policy 7 should be amended as follows:

The minimum land division size for the Non-impacted Forest Lands (F-1/RCP) Zone **and the Impacted Forest Lands (F2-/RCP) Zone** shall be 80 acres, pursuant to OAR 660-06-026(2)(a) ~~except parcels smaller than 80 acres may be authorized for certain uses pursuant to OAR 660-06-026(3) and (4).~~ Area requirements for Impacted Forest Land must be adequate to conserve forest land for impacted farm and forest uses and be consistent with the following criteria:

~~(a) Except as provided in subsection (2) below, for the creation of a wood lot for the purpose of the propagation or harvesting of a forest product, the minimum area shall be at least 20 acres, and that which is consistent with the Douglas fir cubic foot site indexes and minimum area computations promulgated by the Oregon Department of Forestry and specified below, and additional area to accommodate a home site, access and fire breaks, and a logical parcel layout and use of the parcel. There shall be presented for each application sufficient factual documentation to verify that each proposed tract meets the above requirements.~~

<u>Cubic Foot</u>	<u>Potential Yield</u>	<u>Acreage</u>
<u>Site Class</u>	<u>cu.ft./acre/yr</u>	<u>Minimum</u>
6	20-49 cf/ac	64
5	40-84 cf/ac	43
4	85-119 cf/ac	34
3	120-164 cf/ac	24
2	165-224 cf/ac	17

~~(b) To substantially limit any adverse impacts upon commercial forest management which might result from land divisions and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the division of large forest tracts:~~

- ~~(i) Zoned F-2~~
- ~~(ii) Containing at least 160 acres~~
- ~~(iii) For the creation of lots or parcels adjacent to F-1, RCP-zoned lands.~~

~~(c) Deviation from the standard specified in subsections 7(a) and 7(b) above, for a 40-acre parcel on impacted forest land to be used for farm land may be allowed.~~

~~(d) Deviation from the standard specified in subsections 7(a) and 7(b) above, of the impacted forest land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm~~

~~operation consisting of one or more of the following: berries, grapes, or horticultural specialties.~~

~~(e) Lot line adjustments consistent with the definition of "divide" in LC 16.090 are permissible.~~

~~(f) Parcels smaller than specified in subsections (1)-(4) above may be authorized for certain uses pursuant to OAR 660-06-026(3) and (4).~~

New land divisions less than 80 acres may be approved consistent with ORS 215.780(2), 215.783, and OAR 660-006-0026(2) under the circumstances specified at Lane Code 16.210(8) and 16.211(10).

2. Policy 8 should be amended to update citations to administrative rule:

New structures must comply with the Siting and Fire Safety Standards of OAR 660-006-0029 and 660-006-0035.

3. Policy 15 (web version of RCP) should be deleted.

[Has this been done already? That would explain the discrepancy between the version of the RCP posted on the county's website (which identifies Policy 15 as "Policy 16").]

~~Minimum parcel sizes and land division standards for Impacted Forest Lands should be the subject of additional study in future plan revisions and updates.~~

NEEDED AND PROPOSED UPDATES TO LC CH. 14 & 16

I. RELATED TO TEMPLATE DWELLINGS [The following are included in template dwelling proposal]:

LC 16.211(5):

16.211(5)(c)(i)(bb) “at least three dwellings or **permanent** manufactured dwellings existed on January 1, 1993 **and continue to exist . . .**”

16.211(5)(c)(ii)(bb) “at least three dwellings or **permanent** manufactured dwellings existed on January 1, 1993 **and continue to exist . . .**”

16.211(5)(c)(iii)(bb) “at least three dwellings or **permanent** manufactured dwellings existed on January 1, 1993 **and continue to exist . . .**”

(statute and administrative rule language refers only to “dwellings” and does not specifically refer to manufactured dwellings, includes the “continue to exist” criterion)

LC 16.211(8):

16.211(8)(c) **Fire Siting Standards.** The following fire-siting standards ~~or their equivalent~~ shall apply to new residences, dwellings, manufactured dwellings or structures:

II. COMPLIANCE

Amend Lane Code 14.050(3)(b) as follows:

(3) Acceptance. Applications subject to any of the review criteria of this chapter:

* * *

(b) Shall be, within 30 days of receipt, reviewed by the Director to determine if they meet the requirements of LC 14.050(1) and (2) above and are complete. Applications shall be determined to be complete and shall be accepted by the Director when they include the required information, forms and fees. **An application involving property that is the subject of an alleged violation shall be deemed incomplete unless the Director determines that approval of the requested Application would remedy the alleged violation.** When the Director determines that an application is not complete, the Director shall mail written notice to the applicant and disclose exactly what information, forms or fees are lacking.

III. PROPOSED CODE AMENDMENTS RELATED TO HOME OCCUPATIONS

A. Add new definition of “home occupation”:

LC 16.090.

"Home occupation" means a small-scale business activity carried on within a dwelling or other existing buildings normally associated with uses permitted in the zone, by a member or members of the family who occupy the dwelling, where

(1) the occupation is secondary to the use of the dwelling for living purposes and the residential character of the dwelling is maintained, and

(2) the activities satisfy one of the following conditions:

(a) The activities are primarily intended to serve producers or residents of the surrounding rural area, or

(b) The activities are not primarily intended to serve producers or residents of the surrounding rural area, and

(i) the activities do not require ingoing or outgoing deliveries of supplies or finished products, do not generate traffic, emissions, or wastes; and

(ii) the activities do not produce noise, obnoxious odors, vibrations, glare, fumes or electrical interference detectable to normal sensory perception from a location off of the subject property.

B. Amend LC 16.290 to require a home occupation in the RR zone to be listed as a use allowed subject to director approval.

Currently, home occupations in this zone are allowed as permitted uses. In every other zone, home occupations require director approval.

C. Discussion

The intent of the code amendment is to eliminate the potential for approval of home occupations that involve intensive uses that interfere with the rural character of the area. While state statute, ORS 215.448, and Lane Code require the occupation to be operated in a dwelling or “other buildings normally associated with uses permitted in the zone,” home occupations that have external activities that severely impact the neighborhood have been approved. The adoption of a definition that clarifies the scope of home occupations will assist the decision maker in approving only those home occupations that are appropriate.

GOAL ONE COALITION



Goal One is Citizen Involvement

MEMORANDUM

TO: Commissioner Bill Fleenor

FROM: Jim Just

DATE: January 26, 2010

RE: **Template Dwellings**

Dear Commissioner Fleenor,

Following is a brief discussion of issues related to template dwellings in Lane County.

“Alternative forestland dwellings”, more commonly referred to as “template dwellings”, were authorized by the 1993 legislature as a replacement for forest dwellings allowed as “necessary for and accessory to” forest management.

The “necessary for and accessory to” standard was expensive to administer, generated conflict and failed to achieve the policy goals of keeping forest land productive. The intent of the legislature was to instead develop clear and objective standards that add certainty to the market, are easily understandable by the landowner, and meet policy goals by limiting the placement of dwellings to areas already affected by residential values or parcels unlikely to be changed by the presence of a dwelling.

Kevin Birch from ODF in a letter to the Senate Agriculture and Natural Resources Committee explaining the intent of the amendments allowing “large tract” and “template” dwellings, provided evidence that the presence of dwellings may adversely impact timber production:

“[A]dding dwellings to an area adds residential values that compete with timber production. The result of dwellings is reduced timber output.

- In areas with 0 -4 dwellings / section we see no change in the amount of land in production. (This is the range of dwelling densities where we are confident the land will remain productive.)
- But in areas with > 8 dwellings / section the land is only half stocked with timber.

Birch explained that to keep forest land in production, “we need to limit the spread of the [forest – residential] interface”:

“What we want to do is to loosen the current restrictions on placing dwellings in the interface area where the effects of dwellings already exist, and restrict the placement

of dwellings in the forest where they will have negative consequences. Our evidence shows that if we can keep the primary forest land within a range of 0 – 4 dwellings per section, the land is most likely to be kept in timber production.”

I. Issues requiring Lane Code amendments using the PAPA process

A review of Lane County’s template dwelling provisions and other related provisions has revealed several instances where Lane County’s regulations may not comply with state law or should be amended for clarity or policy reasons.

Enacting any of the amendments discussed below would require using the PAPA process, with notice to DLCD, notice to the public, and public hearings before the Planning Commission and Board of Commissioners.

A. Provisions related to qualifying dwellings

ORS 215.750 and OAR 660-006-0027(1)(f) use the word “dwellings”, not distinguishing between “dwellings” and “manufactured dwellings”. The Lane Code language implies that a temporary dwelling could be used to qualify a template dwelling. Also, ORS 215.750 and OAR 660-006-0027(1)(f) specify that the dwellings must currently exist, whereas LC 16.211(5) does not.

Subsections of LC 16.21(5) need to be amended as follows:

16.211(5)(c)(i)(bb) “at least three dwellings or **permanent** manufactured dwellings existed on January 1, 1993 **and continue to exist** . . .”

16.211(5)(c)(ii)(bb) “at least three dwellings or **permanent** manufactured dwellings existed on January 1, 1993 **and continue to exist** . . .”

16.211(5)(c)(iii)(bb) “at least three dwellings or **permanent** manufactured dwellings existed on January 1, 1993 **and continue to exist** . . .”

B. “Contiguous”

“Tract” is defined by OAR 660-006-0027(5)(a) as follows:

“‘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.”

This issue arises because the definition of “contiguous” in LC 13.010 and LC 16.090 suggests that properties under the same ownership but separated by a road may not constitute a “tract” because they are not “contiguous”:

“**Contiguous.** Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous.”

The LC 16.090 definition of “contiguous”, if applied in the context of template dwellings, is not consistent with state law or other applicable provisions of Lane Code.

Template dwellings are limited to one per “tract”. ORS 215.750(4), OAR 660-006-0027(1)(i) and (4), and LC 16.21(5)(a) and (e) provide that a template dwelling may be allowed only if no other dwellings exist on a tract, and if no other dwellings are allowed on other lots or parcels making up a tract and deed restrictions so providing are established.

ORS 215.750(6)(b), OAR 660-006-0027(3)(b), and LC 16.211(5)(c) address the situation where a road crosses a tract, and require that at least one of the three required dwellings be on the same side of the road as the proposed dwelling.

The definition of tract found in OAR 660-006-0027(5)(a) and LC 16.211(5)(a) and the language of OAR 660-006-0027(3)(a) clearly contemplate that a road may cross a tract. The road thus cannot interrupt the tract or divide one tract into two.

Applicable provisions of statute, administrative rule and Lane Code clearly contemplate that a road may cross a tract and does not necessarily form the boundary of a tract.

Recommendation: Amend LC 16.090 and LC 13.010 to delete the definitions of “contiguous.”

C. Fire siting standards

In the past, fire siting standards requiring a secondary fire break have been waived for template dwellings sited within or near the riparian setback area. This has resulted in dwellings being approved where they otherwise could not be approved because standards for the protection of riparian vegetation are not satisfied.

The following amendment should be made, for policy reasons, to offer greater protection for riparian areas within the F2 zone:

16.211(8)(c) **Fire Siting Standards.** The following fire-siting standards ~~or their equivalent~~ shall apply to new residences, dwellings, manufactured dwellings or structures:

II. Additional clarifications of and restrictions on template dwellings

Lane County has the option of adopting template dwelling provisions that are more restrictive than state law. Counties may adopt land use regulations that regulate forest template dwellings more stringently than state statutes do. *Miller v. Multnomah County*, 153 Or App 30, 38-40, 956 P2d 209 (1998).

Other counties have done this. For example, Multnomah County requires that five nearby dwellings be present to qualify for a template dwelling instead of the three dwellings required by statute and administrative rule, and also requires that the dwellings themselves fall completely within the template rather than simply being on a lot or parcel that falls all or partially within the template. Multnomah County also requires that a square template be parallel and perpendicular to section lines, eliminating the ability to “rotate” the template to pick up the required number lots or parcels and lots or parcels with dwellings. Yamhill

County at one time had a provision prohibiting the breaking up of a tract into constituent lots or parcels and transferring ownership of the resulting lots or parcels so as to qualify for multiple template dwellings. Lane County could adopt similar provisions, should the Board so desire.

Perhaps the greatest abuse we have seen regarding template dwellings is plan amendments (typically from F1 or EFU to Forest) and zone changes (typically from F1 or EFU) to F2, which then enable a property owner to subsequently apply for a template dwelling (template dwellings are not allowed in the F1 or EFU zones). From our experience, there are people who actively seek out such opportunities and purchase properties, especially those containing multiple “legal lots”, for the purpose of profiting from rezoning the properties and obtaining template dwelling approvals or at least the opportunity to apply for template dwelling approvals.

This loophole could be closed by adopting a requirement that the property subject to a template dwelling request have been zoned F2 as of November 4, 1993. This is the ‘date of creation or existence’ specified in OAR 660-006-0005(4).

Recommended amendments

1. To eliminate the manipulation of the square template so as to maximize the potential for siting template dwellings, and to clarify how the center of a tract is to be established, LC 16.211(5)(c) should be amended to require the square template to be aligned parallel and perpendicular to section lines, as follows:

(i)(aa) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160 acre square **parallel and perpendicular to section lines and centered on the center of the subject tract as established either mathematically or by the “pin” test**, measured and counted as follows:

(ii)(aa) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160 acre square **parallel and perpendicular to section lines and centered on the center of the subject tract as established either mathematically or by the “pin” test**, measured and counted as follows:

(iii)(aa) All or part of at least eleven other lots or parcels that existed on January 1, 1993, are within a 160 acre square **parallel and perpendicular to section lines and centered on the center of the subject tract as established either mathematically or by the “pin” test**, measured and counted as follows:

2. To ensure that additional dwellings are allowed only in forest areas already adversely impacted by dwellings, the qualifying number of dwellings should be increased to five. Additionally, the qualifying dwellings should fall within the template.

LC 16.21(5)(c)(i), (ii), and (iii) should be amended as follows:

(bb) At least ~~three~~ **five** dwellings or **permanent** manufactured dwellings existed on January 1, 1993 **and continue to exist**, on the other lots or parcels described in LC 16.211(5)(c)(ii)(aa) above **and fall all or partially within the template**. If the measurement is made pursuant to LC 16.211(5)(c)(ii)(aa)(B) above

and if a road crosses the subject tract, then at least one of the ~~three~~ **five** required dwellings or manufactured dwellings shall be located:

3. To bring a halt to the practice of rezoning land so as to qualify for a template dwelling, LC 16.211(5) should be amended as follows:

(5) Template Dwelling. One single-family dwelling or manufactured dwelling is allowed **on a lot or parcel zoned F2 as of November 4, 1993** subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

4. To bring a halt to the practice of breaking up a tract by selling off lots or parcels to different ownerships and thus qualifying multiple lots or parcels for dwellings, LC 16.21(5)(a) should be amended as follows:

(a) The tract upon which the dwelling or manufactured dwelling will be located has no other dwellings or manufactured dwellings on it. As used in LC 16.211(5), "tract" means one or more contiguous lots or parcels in the same ownership **as of January 1, 2010**. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

5. LC 16.211(5)(c)(i) (aa)(A) and (B), (ii)(aa)(A) and (B), and (iii)(aa)(A) and (B) allow the use of a rectangular 160-acre template, one mile long and ¼ mile wide, rather than a square template, if the subject tract "abuts" a stream or a road that existed on January 1, 1993.

"Road" is not defined in Lane Code. To ensure that the legislative intent is carried out, LC 16.21(5)(c) should be amended to clarify that "road" means a "public road" that physically existed on January 1, 1993 and continues to exist presently. Also, as the use of a rectangular template should be limited to situations where development patterns stretch along a road, for a tract to abut a road the border of the tract with the road should be more than a mere driveway.

16.211(5)(c)(i), (ii), and (iii), (A) and (b):

(A) If the subject tract abuts, **for a distance greater than 20 feet**, a road that existed on January 1, 1993, the measurement 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. **A rectangular template is aligned, to the maximum extent possible, with the road or stream when the two corners of the rectangle nearest to the road or stream are equidistant from the center of the road or stream.**

(B) If the subject tract is 60 acres or larger and abuts a road **for a distance greater than 20 feet** or a perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream. **A rectangular template is aligned, to the maximum extent**

possible, with the road or stream when the two corners of the rectangle nearest to the road or stream are equidistant from the center of the road or stream.

Urbanization Oversight Project

Implementing Comprehensive Plan Amendments

I. NEED FOR ACTION

Pursuant to ORS 195.025 (Regional coordination of planning activities) the governing body of Lane County (Lane County Board of Commissioners) has the responsibility and authority for:

(1) “coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county.”

Global Warming/climate change

In 2007, HB 3543 (Global Warming Actions) was adopted and codified in ORS 468A.205 (Policy; greenhouse gas emissions reduction goals). The statute established the following greenhouse gas emissions reduction policies and goals:

“SECTION 2. (1) The Legislative Assembly declares that it is the policy of this state to reduce greenhouse gas emissions in Oregon pursuant to the following greenhouse gas emissions reduction goals:

(a) By 2010, arrest the growth of Oregon’s greenhouse gas emissions and begin to reduce greenhouse gas emissions.

(b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels.

(c) By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.

(2) The Legislative Assembly declares that it is the policy of this state for state and local governments, businesses, nonprofit organizations and individual residents to *prepare for the effects of global warming and by doing so, prevent and reduce the social, economic and environmental effects of global warming.* (emphasis added)

In 2009, the legislature adopted HB 2186. The bill has multiple objectives, including creating a “Metropolitan Planning Organization Greenhouse Gas Emissions Task Force for purpose of studying alternative land use and transportation scenarios that reduce greenhouse gas emissions from certain motor vehicles in areas served by metropolitan planning organizations” and “ Directs task force to recommend legislation to specified interim legislative committees.”

These 2007 and 2009 legislative actions indicate an effort on the part of the state legislature to focus state and local governments on the need to significantly reduce greenhouse gas emissions state wide over the period ranging from 2010 – 2050.

Peak Oil

The State of Oregon's Energy Plan 2007-2009 recognizes that annual oil production will level out and begin a long-term decline.¹ Production will no longer be able to meet growing demand as it has in the past. Peak oil encompasses the idea of peak natural gas and peak coal as well. Peak oil is going to happen, although the timing is uncertain, and that it could cost Oregon's economy dearly. To have substantial impact, mitigation options must be initiated more than a decade in advance of peaking.

While alternatives will be used, they are unlikely to fully replace oil and natural gas. Oil and natural gas (and coal) have been cheap and easy to produce, but the alternatives will be difficult and expensive to produce. As a result, more capital and energy will have to be allocated to produce alternative sources.

In addition, many of the alternatives produce electricity rather than liquid transportation fuels. It could take decades to replace a significant amount of declining oil and natural gas reserves. In addition to alternative supplies, it will be necessary to increase the efficiency of the energy used. With the peak of world oil production approaching, major improvements in the energy efficiency of cars, homes and buildings, lights, appliances, and industrial processes are needed. In addition, major savings can be achieved by walking and bicycling more often, changing land use patterns to reduce transportation needs, and investing more in long-distance rail and mass transit.

Planning coordination to meet greenhouse gas emissions and energy goals.

The LC Board of Commissioners, exercising its county-wide coordinating responsibility and authority pursuant to ORS 195.025, intends to amend the Rural Comprehensive Plan (RCP) to incorporate policies that reflect the need to take actions aimed at reducing greenhouse gas emissions and fossil fuel energy consumption throughout the county.

II. PROPOSED PLAN AMENDMENTS

A. New Goal 2: Land Use Planning plan and zone designations at p. 20

<u>Plan Designation</u>	<u>Zone Classification</u>	<u>Abbrev.</u>
Lands of Critical Importance	Lands of Critical Importance Comb.	/LCI, RCP

B. New Goal 2: Land Use Planning Policy 28 at p. 22

Lane County shall exercise its coordinating responsibility and authority pursuant to ORS 195.025 to achieve county greenhouse gas emissions and fossil fuel energy conservation goals throughout the county.

¹ <http://www.oregon.gov/ENERGY/docs/EnergyPlan07-09.pdf>

C. New Goal 3: Agricultural Lands policy at Comprehensive Plan p. 24

17. Global warming and dwindling supplies of fossil fuels are of increasing concern. Agricultural lands deemed to be of critical importance for ensuring food security for Lane County citizens and the ecological integrity of Lane County shall be inventoried as Lands of Critical Importance with the intent of protecting such lands in perpetuity.

C. New Goal 4: Forest Lands policy at Comprehensive Plan p. 28

16. Global warming and dwindling supplies of fossil fuels are of increasing concern. Forest lands deemed to be of critical importance for ensuring forest products security for Lane County citizens and the ecological integrity of Lane County shall be inventoried as Lands of Critical Importance with the intent of protecting such lands in perpetuity.

D. New Goal 6: Air Quality policies at Comprehensive Plan p. 43

7. It is the policy of Lane County to reduce greenhouse gas emissions in Lane County pursuant to the following greenhouse gas emissions reduction goals:

(a) By 2010, arrest the growth of Lane County's greenhouse gas emissions and begin to reduce greenhouse gas emissions.

(b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels.

(c) By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.

8. It is the policy of Lane County that local governments, businesses, nonprofit organizations and individual residents prepare for the effects of global warming and by doing so, prevent and reduce the social, economic and environmental effects of global warming.

9. Lane County shall develop standards for identifying, evaluating and minimizing the adverse greenhouse gas emissions consequences of major land development and permit requests so as to meet Lane County's emissions reduction goals.

E. New Goal 12: Transportation policy at Comprehensive Plan p. 54

5. Global warming and dwindling supplies of fossil fuels are of increasing concern. Inefficient development patterns within UGBs can result in premature and excessive expansion of UGBs, with adverse consequences for greenhouse gas emissions and energy consumption. Lane County shall fulfill its responsibility under ORS 195.025(1) for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, so as to minimize adverse transportation system impacts and meet Lane County's greenhouse gas emissions and energy consumption goals and objectives.

F. New Goal 13: Energy Conservation policies at Comprehensive Plan p. 55

4. Lane County realizes that peak oil – which encompasses the idea of peak natural gas and peak coal as well - is going to happen, although the timing is uncertain; and that it could cost Oregon’s economy dearly. To have substantial impact, mitigation options must be initiated well in advance of peaking.

5. Lane County embraces the objectives of the Oil Depletion Protocol and will strive to reduce oil consumption in Lane County by at least the world depletion rate.²

6. Lane County shall develop standards for identifying, evaluating and minimizing the adverse energy consequences of major land development and/or building permit requests.

7. It is the policy of Lane County that, by 2020, all of Lane County’s electricity shall be generated by sources other than coal-fired plants unless all carbon emissions from coal-fired plants are permanently sequestered.

G. New Goal 14: Urbanization policy at Comprehensive Plan p. 58

18. Global warming and dwindling supplies of fossil fuels are of increasing concern. Inefficient development patterns within UGBs can result in premature and excessive expansion of UGBs, with adverse consequences for greenhouse gas emissions and energy consumption. Lane County shall fulfill its responsibility under ORS 195.025(1) for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, so as to meet Lane County’s greenhouse gas emissions and energy conservation goals and objectives.

² <http://www.oildepletionprotocol.org/theprotocol>

ATTACHMENT "A"

LMD Long-Range Planning Work Program Project List		Mandatory Yes / No	LCPC Priority Ranking	Project Duration	FTE Requirement
Program Maintenance					
1.	Modernize & streamline Lane Code/Manual, create internal consistency, incorporate recent state law changes, consider policy changes	NO	# 1c	Ongoing	0.8
2.	E-Government Services: GIS Application Development & Web Maintenance	YES		Ongoing	0.15
3.	FEMA - Community Rating System	YES		Ongoing	0.5
Policy Issues					
4.	Protection of Surface Water and Groundwater Source Zones (.1 FTE allocated to Tri-County water quality effort)	NO	# 1a	Ongoing	0.2
5.	Analysis of Riparian Ordinance	NO	# 1b	6-12 months	0.25
6.	Farmland and Open Space Protection	NO	# 2	Multi-Year	0.4
7.	Channel Migration Hazard Overlay Study	NO	# 3	Multi-Year	0.4
Intergovernmental Coordination					
8.	Intergovernmental Coordination - Small Cities	YES		Ongoing	0.5
9.	Intergovernmental Coordination - Metro Area	YES		Ongoing	0.5
Recent Board Considerations					
10.	Eliminate F-2 Template Dwelling Provisions	NO	No Recommendation	4-6 months	
11.	Eliminate Option for Zone Changes from Resource Land Based on D&C Status	NO	No Recommendation	4-6 months	0.1
Miscellaneous Work					
12.	Plan Amendments and Zone Change Applications	YES		Ongoing	0.5
13.	Land Use Compatibility Review for Riparian Enhancement Projects	YES		Ongoing	0.1
14.	Research Assistance to DLCD on Active Ballot Measure 49 Claims	YES		Ongoing	0.05
New Projects					
15.	Goshen Rural Industrial / Urban Industrial Plan Amendment and Zone Change	NO		4-6 months	0.05
Total FTE:					4.5