From: jamannllc@comcast.net
Sent: Friday, April 30, 2010 4:19 PM
To: WILKINSON Sarah W
Cc: HOWE Kent
Subject: Proposed Changes to Lane Code
Attachments: 1. Draft Lane County Rural Comprehensive Plan Policies.doc; Draft Changes to LC 16.251 NONCONFORMING USES.doc; 2. LC 16.211(8) siting standards.doc

Sara and Kent,

Attached are two proposed policies to give direction to some of the code amendments that are being considered. Attached are the proposed amendments to Lane Code. Two of the code amendments are to the siting standards in LC 16.211. One of the amendments is to the nonconforming use section of Lane Code that is intended to make it consistent with ORS 15 simply by deleting the LC 16 provisions and adopting the ORS 215 provisions by reference.

Thanks for the opportunty to submit these amendments.

Jim

James A. Mann LLC

Draft Lane County Rural Comprehensive Plan
General Plan Policies

Rural living has been and continues to be a way of life for a significant percentage of Lane County's population. Therefore, Lane County supports rural living.

Farm and forest uses and rural businesses have significantly contributed and continue to significantly contribute to the overall economy of Lane County. Therefore, Lane County supports the rural economy.

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Deleted Materials has ~~crossed-through lines~~

NONCONFORMING USES
RURAL COMPREHENSIVE PLAN

16.251 Nonconforming Uses.

Except as is hereinafter provided in this Chapter, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Chapter or at the time of a change in the official zoning maps shall comply with ORS 215.130. ~~may be continued although such use does not conform with the provisions of this Chapter~~.

(1) Verification of Nonconforming Use. The verification of a nonconforming use may be obtained subject to Director approval pursuant to LC 14.100. Verification of a nonconforming use is required prior to requesting approval to increase, restore, alter or repair a nonconforming use. When evaluating a request for verification, the ~~following~~ criteria in ORS 215.130 and .135 shall apply~~:~~.

~~(a) To be valid, a nonconforming use must have been lawfully established prior to the enactment of an ordinance restricting or prohibiting the use.~~

~~(b) The use must have been in actual existence prior to the enactment of an ordinance restricting or prohibiting the use or have proceeded so far toward completion that a right to complete and maintain the use is deemed to have vested in the landowner.~~

~~(c) The nonuse of a nonconforming use of a structure or property for a period in excess of one year will prohibit the resumption of the nonconforming use. The burden of proof for the verification of a nonconforming use is upon the applicant.~~

~~(2) Change in Nonconforming Use. A nonconforming use may be changed only insofar as it applies to the zone in which it is located. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.~~

~~(3) Increase of Nonconforming Use. A nonconforming use shall not be increased, except that permission to extend the use to any portion of a building or lot which portion was arranged or designed for such nonconforming use at the time of the passage of this Chapter may be granted subject to Director approval pursuant to LC 14.100.~~

(~~4~~2) Vested Right. Nothing contained in this Chapter shall require any change in the plans, construction, alteration or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this Chapter, provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the time construction was commenced.

~~(5) Discontinuance of Nonconforming Use. When a non-conforming use of a structure or property is discontinued for a period in excess of one year, the structure or property shall not thereafter be used, except in conformance with the zone in which it is located. (Revised by Ordinance 7-87, 6.17.87; 4-91, 5.17.9 1)~~

~~(6) Unlawful Use of a Nonconforming Use. No unlawful use of property existing at the time of passage of this Chapter shall be deemed a nonconforming use.~~

~~(7) Restoration of Nonconforming Building or Structure.~~

~~(a) A nonconforming building or structure which is damaged by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building or structure or part thereof, which~~

~~existed at the time of such partial destruction may be resumed; provided that the restoration is commenced within a period of one year and is diligently prosecuted to completion and verification of the nonconforming use has been obtained.~~

~~(b) The restoration or reconstruction of a nonconforming building or structure may not increase the floor area or create a greater nonconformance than existed at the time of damage or destruction.~~

(~~8~~3) Conveyance of Nonconforming Use. Nothing in this Chapter shall be construed to limit the sale, transfer, other conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer or other conveyance does not otherwise violate the provisions of this Chapter.

(~~9~~4) Restoration of Conforming Use on Nonconforming Lot. Nothing in this Chapter shall be construed to prevent the reconstruction or replacement of a preexisting building or structure conforming as to use on a nonconforming lot, so long as such lot did not become nonconforming in violation of the provisions of this Chapter.

~~(10) Repairs of a Nonconforming Use. Repairs of a nonconforming use may be permitted to continue the use in a reasonable manner subject to Director approval pursuant to LC 14.100 and consistent with the intent of ORS 215.130(5-8) and shall be evaluated pursuant to criteria expressed in LC 16.251(12) below.~~

(~~11~~5) Alterations of a Nonconforming Use. Alterations of a nonconforming use may be permitted to continue the use in a reasonable manner subject to ~~Hearings Official~~ Director approval pursuant to LC 14.~~300~~100 and consistent with ~~the intent of~~ ORS 215.130(9)~~, and shall be evaluated pursuant to criteria expressed in LC 16.251(12) below. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use~~.

~~(12) Criteria for Decision. When evaluating a proposal for increase, restoration, alteration or repair, the following criteria shall apply:~~

~~(a) The change in the use will be of no greater adverse impact to the neighborhood.~~

~~(b) The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood.~~

Other provisions of this Chapter, such as property development standards, are met.

(~~13~~6) Conditions of Approval. In order to assure compatibility of the proposed development with the surrounding area, any of the following conditions may be imposed as conditions of approval:

(a) Special yards and spaces.
(b) Fences and walls.
(c) Special parking and/or loading provisions.
(d) Street dedication and improvements or bonds in lieu of improvements.
(f) Control of points of vehicular ingress and egress.
(h) Special provisions for signs.
(i) Landscaping and the maintenance of grounds.
(j) Control of noise, vibration, odors or other similar nuisances.
(k) Limitation of time for certain activities.
(l) A time period in which a proposed use shall be developed.
(m) A limit of total duration of use as herein provided.

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Deleted material has ~~strike-throughs~~

(8) Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h) and (j), and in LC 16.211(3) through (7) above. These standards are 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. The standards in LC 16.211(8)(a)-through(b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

(a) Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use, outside of designated floodway areas, outside of areas identified by geotechnical reports as landslide hazard areas, and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses; and

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 and at least 30 feet from the adjoining lines of property zoned F-2 or EFU; and

(iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met; and

(v) Structures other than a fence or sign shall not be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and

(bb) 30 feet from all other property lines; and

(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

(f) Land Slide Hazard Areas. Except those structures exempt from building codes under ORS 455.310 and 455.315, for the siting of dwellings and other structures designed for human occupancy, including those being restored under ORS 215.130 (6), the property owner shall provide objective evidence regarding whether or not there is a substantial risk for rapidly moving landslides. Where the evidence indicates that there is such a risk, the property owner shall provide a geotechnical report to the Director. the Director shall provide a copy of the geotechnical report to the State Department of Geology and Mineral Industries or the State Forestry Department, as appropriate, and shall provide that Department with 21 days to submit written comments to the Director regarding the geotechnical report. If a geotechnical report discloses that the entire parcel is subject to a rapidly moving landslide or that the subject lot or parcel does not contain sufficient buildable area that is not subject to a rapidly moving landslide, the request for a dwelling shall be denied.