Sarah & Matt,

Thank you for the opportunity to submit my comments to the Lane County Land Use Task Force.

First off, I would like to state that I don't think there are too many critical issues that need to be corrected with the Lane Code although I do agree that some of the code is inconsistent and probably could use some technical fixes. I think the Lane County Planning staff is aware of most of those inconsistencies and would be the appropriate individuals to propose and implement those changes.

The Goal One Coalition has proposed some significant policy changes to the Lane County Land Use code and it appears that the BCC has given those specific proposals some priority with the formation of the Lane County Land Use Task Force group. In one of the earlier Stakeholder emails, I was pleased to note that Commissioner Fleenor stated that 'The concept that only Goal One's proposals would be pursued is completely wrong- the BCC is interested in looking at all options from any individual or group who wishes to submit a proposal'.

I believe that the majority of rural landowners are responsible, ethical and conscientious. Landowners take pride in their homes and property and expect others to do the same. Property owners also want to protect their investments and maintain their options for all legal uses of their property and should be given that opportunity.

I am in complete agreement with the Goal One's concern for protecting our rural communities and our farm and forest lands. There are currently rules in place to protect farm and forestland that were crafted using State law as a guideline. In addition there are zone specific rules that allow owners of these lands to utilize their property for resource use as well as conditional non-resource uses. Those property rights should be preserved.

I have made a quick list of some ideas I have for improvements to the Lane Code. I appreciate the opportunity to provide my input to this process and look forward to future discussions in these matters.

Regards,

Jeremy Keepers

Changes Pertaining To The F2 Zone LC16.211

16.211(1)(c) – F2 Zone Standards
Amend 16.211 to include applicable text from LC10.104. There are two different sets of standards for the F2 zone. These standards should be combined as applicable into LC16.211.

16.211(5)(a) – F2 Template Tract Reference
Remove the text that reads "A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway." There is no acreage standard for template dwellings. This text is irrelevant and should be removed.

16.211(5)(a) – F2 Template Tract Reference
Update the current F2 Zone Code by stating that the "Tract" definition applies at time of application's final approval for a dwelling. Lane County currently interprets the State definition of "Tract" correctly. The State definition clearly allows for individual legal lots within a tract to be sold. Each individual lot in different ownership at the time of final Lane County application approval for a dwelling then qualifies for the uses specified in the F2 Zone Code. 32 OR Luba 147, Parsons vs Clackamas Co, 1996 clearly shows that Lane County is correctly interpreting the definition of "Tract" and how it applies to template dwellings.

The definition of Tract was carefully crafted by the State of Oregon Legislature without a date. It is readily apparent that the Tract definition is to be applied at the time of final conditional use approval. Applying the definition of Tract at any time prior to an application's approval will have significant legal complications, implications that will unravel for many years to come as well as numerous unintended consequences.

Contiguous properties should not be combined into tracts. Combining all lots or parcels into a tract would impair the ability for a landowner to sell lots individually. The smaller forest and farm tracts are more affordable to small landowners. Combining these tracts will make land unaffordable for most Lane County residents.

16.211(5)(c)(i)(A) & (B), 16.211(5)(c)(ii)(A) & (B) & 16.211(5)(c)(iii)(A) & (B) – Rectangular Template Alignment
The code needs to clarify when the rectangular template can be aligned to a "Road". The definition of a "Road" by state statute is left up to the County to define (as clarified by LUBA). In Lane Co. a "Road" is defined as serving two or more dwellings. Petersen v Yamhill County, 33 Or LUBA 584 (1997) states that the county defines what is considered a "Road" when applying the rectangular template (Lane County has defined Road in their code as serving more than two houses). Need to solidify the definition of "Road" in the F2 Zone code section definitions.

Clarify in the code text that it is acceptable to use the rectangular template for template dwelling determination where access is provided along a public or private access road (a road serves 2 or more dwellings).

16.211(5)(c)(i)(aa), 16.211(5)(c)(ii)(aa) & 16.211(5)(c)(iii)(aa) – Square Template Criteria

Add code languages that reads: "a square template may be rotated to any angle when applying the template to a given lot, parcel or tract." During a template test the 160 acre square may be rotated to any alignment. The LUBA case Erling Yontz vs Multnomah County LUBA No. 97-116, Page 3 subnote (3) reads "....the administrative rule implementing ORS 215.750 (1), allows the 160-acre square template to be rotated, and does not require that the three other dwellings be located within the template area."

16.211(5)(c)(i)(bb), 16.211(5)(c)(ii)(bb) & 16.211(5)(c)(iii)(bb) – Template Criteria

Dwellings do not need to be inside the square template (see LUBA case above). Add text that states "a dwelling that existed on January 1, 1993 must be located on a lot, parcel or tract that the square template touches." The LUBA case Erling Yontz vs Multnoma County LUBA No. 97-116, Page 3 subnote (3) reads "....the administrative rule implementing ORS 215.750 (1), allows the 160-acre square template to be rotated, and does not require that the three other dwellings be located within the template area."

16.211(2) – Outright Permitted Recreational Uses In Forest Zones

Add 16.211(2)(n) to allow for outright permitted recreational uses. Clarify and expand this section to allow recreational sites (camping, yurts, or hunting, fishing structures) as outright permitted uses in all forest zones. The urban public desires recreational opportunities in the community timberland properties. Promote and encourage recreational uses close to town.

16.211(8)(iii) – Setback Standards

Setbacks from zone to zone are inconsistent. When placing an F2 dwelling you are required if possible to be 500' from an F1 zone. However, there are multiple RR zoned properties abutting both F1 and F2 zoned properties. The setback for an RR dwelling is currently 10' from the property line which in many cases puts the dwelling within 10' of property zoned F1 or F2. Trees may fall onto a neighboring dwelling or accessory structure regardless of the adjoining zoning designation.

Less than required setbacks for dwellings (including accessory buildings) should be allowed in all zones and when placing a dwelling adjacent to any resource lands provided the dwelling owner sign and record a damage waiver (damage waiver protecting the adjacent landowner - due to potential blow down of timber or impacts from farm/forest uses). The 500' setback should be eliminated from the code as it is more restrictive than State law requires. The other existing F2 codes comply with State law and no changes should be made.

Need monetary penalty for non-compliance with Farm/Forest covenant.

Organic farms should also be required to be setback from adjoining farm/forest properties or sign and record damage waivers – to prevent conflict with adjoining landowners who have not chosen organic farm/forestry methods (consider adding into the Farm/Forest easement).

16.211(8) Dwelling Siting Standards
There should be no limit on the placement of accessory buildings and structures in the F1 or F2 zone. These structures should not be required to be within the standard dwelling setback areas. If they are closer to the property line then a damage waiver should be signed and recorded.

Accessory buildings and structures should be allowed to be constructed prior to dwelling approval on F1 & F2 zoned land. State Code regulates dwellings, not buildings and structures associated with dwellings.

16.211(8)(c) Fire Siting Standards
Add text to code stating that riparian areas and streams, rivers and waterbodies can be included in the required fire break area without removal of vegetation. As verified in the Lovinger Vs Lane County LUBA case the riparian area can be included as a qualified fire break area without removal of vegetation.

16.211(7)(d) Covenants, Conditions & Restrictions.
Require Farm/Forest easement documents to be recorded and create a public database so that landowners are held accountable to their 'CC&R' agreement 'not to complain' about forest & farm management.

Require Farm/Forest easements to be signed and recorded for any properties that are applying for a home occupation, special use permit, building permit or Replacement Dwelling/Land Use approval. 'Grandfathered' dwellings in the vicinity of farm & forest properties need to be updated to comply with current restrictions – in order to protect ability to manage surrounding forest & ag lands.

16.211(5) – F2 & 16.212 - EFU – Application of Template Dwelling Standards.
Add the following text: "The template dwelling standards shall be applied to resource lands devoted to predominately forest use on January 1, 1993 (all resource zones). Dwellings may be approved under the F2 template test if the predominate (greater than 50% of the acreage was in any stage of timber production) use of a lot, parcel or tract was in forest use."

16.211(2) – F2 Zone Outright Recreational Uses
Add 16.211(2)(n) to allow for outright permitted recreational uses. Clarify and expand ability the allowed uses in this section to allow recreational sites (camping, yurts, or hunting, fishing structures) as outright permitted uses in forest zones. The urban public desires recreational opportunities in the community timberland properties. Promote and encourage recreational uses close to town to prevent increased driving distances.

F1 Zone – 16.210

F1 Zone 16.210 – Apply All Updated F2 Code Requirements To F1 Zone
Once the proposed F2 code updates previously mentioned under the F2 zoning are completed the entire F2 code should be applied to the F1 zone. The current F1 zone code should be eliminated. This will bring Lane County's code governing uses of forestland into compliance with the State Code.

Consider redesignating public resource lands (eg BLM, USFS, County & State of Oregon) as non-impacted forestland and apply the current F1 code to these lands. Consider all privately owned forest lands as being 'Impacted'.

If the F1 zone cannot be changed to mirror the updated F2 code, then land owners should be allowed be allowed to rezone their land to impacted forestland (F2). Any resource land that gets a verbal or written complaint should be allowed to rezone from F1 to F2-Impacted Forestland

EFU Zone 16.212

16.212 - Application Of Template Dwelling Standards.
Add the following text in a new section titled 16.212(11): "The template dwelling standards shall be applied to resource lands devoted to predominately forest use on January 1, 1993 (all resource zones). Dwellings may be approved under the F2 template test if the predominate (greater than 50% of the acreage was in any stage of timber production) use of a lot, parcel or tract was in forest use." This text addition allows dwellings on forest use lots, parcels or tracts as the State Code intended for uses on lands with predominate forest uses.

16.212(7)(c) & (d) – Small Woodlot Dwelling
There needs to be strict definitions of the study area, method and criteria to be evaluated during the application process. Specifically section 16.212(7)(c)(i)(bb) seem to be too subjective and open to challenge. When challenged you are always told why your study method is incorrect and never told what it should be. The same criteria is cited in 16.212(7)(d) and needs more definition of the study area, method and criteria.

Zoning Corrections and Updates – All Zones

Simplify & improve process for identifying errors & omissions for mis-zoned lands (ex. – F1 properties located adjacent to RR). Provide for a comprehensive Lane County review to periodically identify and correct obvious errors & omissions. I can provide multiple examples of these impacted F1 lands that adjoin highly developed RR zoned areas.

County should complete a comprehensive study to properly zone lands. Accurate rezoning of resource lands to marginal lands would be easy to complete utilizing improved and available GIS soil data.

In an effort to align current forestland code to state standards, a review should be completed of lands that were in "predominate" forest use as of January 1, 1993. The zoning of lands that were predominately in forest use should be redesignated as a forestland zone.

Need to review all Lane County resource lands and properly classify lands as marginal lands that meet marginal land criteria.

Codify rezoning critera by reviewing recent LUBA decisions. For example LUBA has clarified many of the criteria required to rezone from a resource designation to marginal lands.

Legal Lots LC13.010 & 12.020

Add the legal lot criteria shown in Attachment A – Lane County Legal Lot Criteria to the Lane Code.

Remainder lots are legal lots.

All Aliquot lots are legal lots.

Sections (640 acres) are legal lots. For a single deed which conveys aliquot parts of multiple sections the aliquot portions in each section are legal lots.

Individual Government lots are legal lots.

Clarify definition of legal lots – include lands divided by public road, government lots, DLC's (or portions thereof). Petitioned county roads and territorial roads that were converted to county roads are owned in fee title by the county and do legally divide property.

County recognized subdivided lots are legal lots and do not need to go through the legal lot verification and public notice process.

Any portion of a subdivided lot within a deeded parcel remains an individual legal lot. Subdivision lines remain unless a vacation has been completed on said line. Legal lots created by deeds cutting over subdivisions will be required to go through the legal lot process.

Territorial Roads, Petitioned Roads and County Roads are fee title roads and do divide property. Lane County awarded damages when establishing petitioned roads which supports fee title taking of property and subsequent division of land by the intervening fee title road. Lane County's current process for vacating roads contains a fee for "buying

back" the area of the road being vacated which further indicates that these roads are viewed as being owned in fee by Lane County.

General Suggestions All Zones

Make riparian code in line with State standards – Lane County code is currently more restrictive on riparian standards than the state. Align riparian standards to the State requirements.

Example LC16.211(2)(o). Hardship dwellings should require a recorded document in Lane County Deeds and Records stating that the dwelling is a temporary structure. Document should list all conditions and criteria for removal at the end of the hardship. Requiring a deed restriction be recorded in Public Records would ensure that properties can't be sold or transferred without notification and status review of the 'temporary' hardship permit. Current process is sometimes abused and properties are often sold to a new owner without knowledge of 'temporary status' of dwelling.

Forestland management is regulated by the Oregon Forest Practices Act and should not be additionally regulated by Lane County. (same for other environmental laws – pesticides, hazardous material storage, oil spills, etc.). Not an efficient use of our county resources.

The BCC needs to provide consistency to all private landowners concerning land use rights. People acquired land under a given set of rules and should not have the rules changed mid-ownership. It really makes it difficult for those landowners to meet their long term objectives they have planned for their property.

If the BCC truly wants to protect farm & forest lands – they need to protect farmers and foresters from activist (anti-resource) groups whose only focus is to force those farmers & foresters into changing the use of their property to something other than resource use.

This project of amending the Lane County Code will impact all of Lane County and should be widely publicized to enable the process to go forward with full support of the entire community. The review of the Lane Code is an important project. It cannot be rushed or we will make hasty decisions without thought to the consequences of our actions. To do it right – it will take time, resources and input from the broader public.

The state designed the template test to allow dwellings on resource lands in areas where the overall land use pattern was committed to non-resource use. The application of this dwelling option has a limited scope due to the criteria requiring that the three houses located on parcels touched by the template to exist on January 1, 1993. Given these rules the application of template dwellings is self regulating and as template dwellings are approved the available future template dwellings are reduced (effectively a cap on the number of template dwellings within the State of Oregon).

Peak oil and global warming consideration - effect on land planning

Peak oil and global warming is not a proven science. If Lane County starts regulating land use in an effort to reduce energy consumption they should not single out and restrict specific ownership types (eg. forestland or rural land). Restricting one ownership type and not others is discriminatory and should not be the method that is used to reduce countywide energy consumption. The burden of energy use reduction should be borne by all Lane County (cities included) citizens. If efforts are made within the land use planning arena to control energy use it should be a comprehensive countywide review of all property uses (private, government, resource and non-resource). Some examples of energy use reduction ideas are mentioned below and there are many more:

- Education of all County landowners on ways to reduce energy use.
- Open up Rural Commercial Land by rezoning so that rural commercial hubs can be developed for business, office space and retail activities. This reduces travel requirement from rural to urban locations.
- Allow for more cluster developments in rural areas to take properly utilize already developed road and power infrastructure.
- Improved city roads, widen city bridges at choke points, etc to reduce traffic congestion (eg. Removing traffic choke points will increase urban fuel efficiency).
- More people forced to move to cities = increased traffic congestion and all flow of traffic is impacted. So now someone driving from a rural area has been eliminated, however the cumulative effect of those displaced rural residents has impacted far more traffic and resulted in increased fuel use overall).
- Encourage alternative energy options by outright allowing and permitting placement of wind turbines in farm & forest zones (also hydro, geothermal, pumped storage hydro & solar and other emerging alternative energy sources)
- Gravel pits strategically located at much closer intervals than the currently developed gravel sources. This would prevent trucking gravel long distance for use in city development, bridge work, road contstruction, etc.

Rural living is a necessary part of a thriving community and people who desire to take part in that lifestyle should be allowed that opportunity. We need to keep rural schools and communities viable. These rural communities will help raise the future generations who will manage the rural resources and live on rural land. Population growth is a fact – you can't control that through modification of Lane County Land Use codes. We certainly can go backwards with restrictive energy policies, although I think it is more productive and realistic to look at all options that affect energy usage.

LAND MANAGEMENT DIVISION

PUBLIC WORKS DEPARTMENT

125 E 8th AVENUE, EUGENE OR 97401

PLANNING: 682-3807

LEGAL LOTS

This guide outlines zoning and land use laws concerning legal lots. This guide is for informational purposes only and is not to be considered a substitute for the language of state or local regulations. The information in this handout is derived from Oregon Revised Statutes (ORS) Chapters 92 and 215, and the policies of the Lane County Land Management Division.

A legal lot is a unit of land (lot or parcel) that conforms to the applicable regulations that existed at the time the parcel or lot was first created. It remains a legal lot unless the parcel or lot lines are changed, the lot lines are vacated, or the unit of land is further divided. A legal lot is required prior to development of most uses. When an applicant requests verification of a legal lot, staff researches the history of the parcel to determine compliance with the following requirements.

LEGAL LOT CRITERIA

1. The unit of land was created by an approved partition;
2. The unit of land was created by an approved subdivision;
3. The unit of land was created by deed, lease or land sales contract signed prior to any applicable zoning, partitioning or subdivision ordinances;
4. The unit of land was created by deed, lease or land sales contract in compliance with applicable zoning requirements at a time prior to applicable partitioning or subdivision ordinances;
5. The unit of land was created by deed, lease or land sales contract between May 2, 1962 and March 26, 1975, and:
   - Was located in the urbanizing area as shown on the map entitled "Lane County Urbanizing Area" contained in the Revised Subdivision Ordinance enacted on May 2, 1962, and
   - Was a division of land for agricultural purposes, where each resulting lot or parcel is 5 acres or larger in size, and
   - Has a width of not less than 300 feet for the entire length between the front lot line and rear lot line, and
   - Has frontage of not less than 300 feet on a street, provided that such street has a right of way width of not less than 50 feet and not less than such width as may be called for in the Master Road Plan.
6. The unit of land was created as a result of a lien foreclosure;
7. The unit of land was created as a result of dedication of a public road prior to 1990;
8. A unit of land determined to be a legal lot through a prior County approval of a land use decision or building permit;
9. The unit of land was created by a Trust deed mortgage foreclosure;
10. The unit of land was created by a surveyed tract prior to April 8, 1949;
11. The unit of land was created by a circuit court decision between Oct.3, 1973 and Oct. 4, 1977;
12. The unit of land was created by deed in a resource zone from March 26, 1975 to August 31, 1978 and not more than three units of land were created in a calendar year, and:
    - Each resulting unit of land constituted a government lot, or
    - Each unit of land contained at least 38 acres.
13. The unit of land was created by the claim of intervening state or federal ownership of navigable streams, meandered lakes, tidewaters;
14. The unit of land was created by the sale or grant of federal lands by the federal government;
15. The unit of land is recognized as a legal lot as the result of court decisions or LUBA opinions;
16. The unit of land is the remainder of a parcel divided under a method listed above;
17. The unit of land has previously been determined to be a legal lot.

Words such as "and" or "also" in legal descriptions in deeds or other instruments conveying real property, do not operate to establish individual legal lots unless the properties are noncontiguous.

Related Brochures

Dwellings in Forest zones
Dwellings in Farm zone
Dwellings in Rural Residential zone