



Oregon
Theodore R. Kubangski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/17/2012

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Lane County Plan Amendment
DLCD File Number 005-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, January 02, 2013

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Stephanie Schulz, Lane County
Jon Jinings, DLCD Community Services Specialist
Dave Perry, DLCD Regional Representative

<paa> YA/l



ADOPTED PLAN AMENDMENT

JURIS ABB :	ALANEC	Adopted Database No.:	17271
Was Proposal Submitted prior to adoption:	Y	Proposed Database No.:	16871
Date Adoption Notice Received:	12/12/2012	Jurisdiction:	LANE COUNTY
Date of Adoption:	8/14/2012	DLCD File No.:	005-08
Date Adoption Notice sent:	12/17/2012		
Appeal Deadline:	1/2/2013	Local File # :	PA 08-5363
Additional File associated with this Proposal:	N	Appeal filed: LUBA No.:	Decision:

Proposed Adoption:

Co-Adoption of the March 2008 Florence Realizaion 2020 Comprehensive Plan, the Florence Transportation System Plan (March 2008), and the Florence Stormwater Management Plan (October 2000) for Application within the Florence Urban Growth Boundary. **Revised Notice** received 10/23/2008: Addition of Lane Code Chapter 10 Amendments for Implementation of Additional Policy Amendments initiated by Florence City Council for Application Within the Florence Urbanizable (IU) Area Under Periodic Review and Co-Adoption of the Florence Realization 2020 Comprehensive Plan. **Revised Notice** received on 6/20/2011 changing the first evidentiary hearing date from 6/17/2008 to 8/2/2011 and the final hearing date from 8/20/2008 to 8/31/2011 and adding revised text.

Changes to Proposed Amendments:

The adopted policy differs slightly in wording from the one proposed initially. However, the intent of the policy is similar in outcome.

Affected Agencies:

Oregon Department of Transportation, Oregon Coastal Zone Management Association, Land County, Port of Siuslaw, Heceta Water District, and City of Florence.

M = Map T = Text B = Both

Amendment Type: B Ordinance No: 1289

PLANUPDATE PE.HSG
 DEVCODE PE.TRANS
 PE.CININV PE.GOAL14
 PE.GOAL2 GOALS16-18

Original Use: New Use: Acres:

Urban Growth Boundary Expansion:

UGB Expansion:
 Acres Involved:

Statewide Planning Goals:
 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,

Location:
 City of Florence

OF AREAS: 1.00

Proposal

Date Proposal Submitted:	10/23/2008	Number of Amendments:	
First Evidentiary Hearing date:	8/2/2011	Days to First Evidentiary Hearing:	50
Final Hearing date:	8/31/2011	Days to Final Hearing:	1042
Local Government Contact:	Stephanie Schulz	Date Proposed Notice Sent:	
Contact Phone:	541-682-3958	Date Participation Notice Sent:	

Review

Agency Participation:	YA	Assigning Supervisor:	JJ	<u>Lead Reviewer:</u>	DP
Draft Deadline Date:	07/12	Time spent on Review:	6.00	Reviewer 2:	BC
Mail Deadline Date:	07/13	Response Sent:	Yes	Reviewer 3:	PK
Fax Deadline Date:	07/18	Type of Response:	Letter	Reviewer 4:	
		Date Response sent:		Reviewer 5:	



FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DEPT OF

DEC 12 2012

LAND CONSERVATION AND DEVELOPMENT
For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Lane County**

Local file number: **PA 08-5363**

Date of Adoption: **8/14/2012**

Date Mailed: **December 7, 2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 7/24/2011

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Co-adoption of a revised annexation policy (policy #1) for the Florence Realization 2020 Comprehensive Plan.

Does the Adoption differ from proposal? Yes, Please explain below:

The adopted policy differs slightly in wording from the one proposed initially. However, the intent of the policy is similar in outcome.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **City limits and UGB of Florence**

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>						

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 005-08(16871)[17271]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Lane County, City of Florence

Local Contact: **Mark Rust, AICP**

Phone: **(541) 682-4541** Extension:

Address: **3040 N. Delta Highway**

Fax Number: **541-682-3947**

City: **Eugene**

Zip: **97408-**

E-mail Address: **mark.rust@co.lane.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18.

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ -1/2x11 **green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

Ordinance No. PA 1289

**In The Matter of Adopting a Revised Chapter 14:
Urbanization, Annexation Policies, Policy 1 for The
Florence Realization 2020 Comprehensive Plan As
Applicable Within The Urban Growth Boundary
Outside Florence City Limits; (File No. PA 08-5363)**

WHEREAS, land within the Urban Growth Boundary of the Florence Comprehensive Plan but outside the City limits is within the political jurisdiction of Lane County, and is subject to County-adopted application of City Plan designations and Plan policies; and

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance No. PA 1214 co-adopted Florence Periodic Review Work Task No. 1, Urban Growth Boundary, on October 27, 2004; and

WHEREAS, the City of Florence adopted a revised comprehensive plan called the "Florence Realization 2020 Comprehensive Plan," a revised Comprehensive Plan Map, and new or updated refinement plans for water, wastewater, transportation, and stormwater, through the City's completion of Periodic Review Work Tasks 2, 3, 4, 5, 7, and 8; and the City adopted and updated Comprehensive Plan Map and housekeeping amendments to the Realization 2020 Comprehensive Plan and the Transportation System Plan through City of Florence Ordinance No. 6, Series 2008; and

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance No. PA 1249 has adopted policies and provisions of the Florence Realization 2020 Comprehensive Plan in addition to other new or updated refinement plans and an updated Comprehensive Plan Map; and

WHEREAS, the language of Annexation Policy 1 adopted by the Board of County Commissioners on December 1, 2010 in Ordinance No. PA 1249 is different than the policy adopted by the City of Florence; and

WHEREAS, in a letter dated March 3, 2011 the City of Florence has requested that the Board of County Commissioners reconsider the adopted language of the Annexation Policy 1; and

WHEREAS, the Board of County Commissioners on March 15, 2011 directed staff to try to incorporate language acceptable to all parties and process an amendment with a revised policy; and

WHEREAS, the Lane County Planning Commission conducted a public hearing on September 6, 2011 on the matter and left the record open until September 20, 2011 for submittal of additional public testimony; and

WHEREAS, the Lane County Planning Commission deliberated on the matter on October 4, 2011 and recommended a revised Annexation Policy 1 for consideration by the Board of County Commissioners; and

WHEREAS, evidence exists in the record indicating that the proposal meets the requirements of Lane Code and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners of Lane County, has conducted a public hearing and is now ready to take action.

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

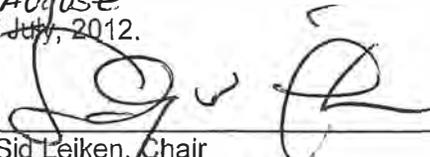
Section 1. The Chapter 14: Urbanization, Annexation Policies, Policy 1 for The Florence Comprehensive Plan, 'Realization 2020' as adopted by the Lane County Board of Commissioners ~~by~~ Ordinance No. PA 1249, is now amended, and completely superseded and replaced by the following policy language:

The procedures of ORS 222.840 et. seq. (Health Hazard Abatement) shall be initiated if needed to remove dangers to public health.

In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not utilize the "island annexation" procedures set forth by ORS 222.750.

FURTHER, although not part of this Ordinance, the Board of County Commissioners adopts the Findings included in and made a part of the Agenda Cover Memo dated October 12, 2011 in support of this decision.

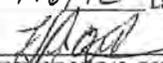
ENACTED this ^{14th} ^{August} day of July, 2012.



Sid Leiken, Chair
Lane County Board of Commissioners



Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
Date 7/16/12 Lane County


OFFICE OF LEGAL COUNSEL

AGENDA COVER MEMO

DATE: October 12, 2011 (Memo)
November 2, 2011 (First Reading)
November 23, 2011 (Second Reading/Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: Mark Rust, AICP, Associate Planner

DEPARTMENT: Public Works/Land Management Division

TITLE: **November 2, 2011**
FIRST READING AND SETTING THE SECOND READING AND PUBLIC HEARING/ORDINANCE NO. PA 1289

November 23, 2011
SECOND READING AND PUBLIC HEARING ON ORDINANCE NO. PA 1289

In The Matter of Adopting a Revised Chapter 14: Urbanization, Annexation Policies, Policy 1 for The Florence Realization 2020 Comprehensive Plan As Applicable Within The Urban Growth Boundary Outside Florence City Limits. (File No. PA 08-5363; Applicant, City of Florence) (Mark Rust, Associate Planner) (Estimated 10 minutes)

I. PROPOSED MOTION(S)

November 2, 2011: I move approval of the first reading and setting the second reading and public hearing on Ordinance No. PA 1289 for November 23, 2011 at 1:30 p.m.

November 23, 2011:

1. Approve Ordinance No. PA 1289 as presented.
2. Revise Ordinance No. PA 1289 as directed by the Board and return for approval of the revised Ordinance on a date and time certain set by the Board.
3. Do not approve Ordinance No. PA 1289 and deny the request for amending Annexation Policy 1.

II. AGENDY ITEM SUMMARY

Consider the recommendation from the Lane County Planning Commission (LCPC) in regard to the revised policy language for the City of Florence Annexation Policy #1, in Chapter 14: Urbanization that is part of the "Florence Realization 2020 Comprehensive Plan".

The LCPC recommended the following revised Policy 1 language:

The procedures of ORS 222.840 *et. seq.* (Health Hazard Abatement) shall be initiated if needed to remove dangers to public health. In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not utilize annexation utilizing the "island annexation" procedures set forth by ORS 222.750.

Additionally, the LCPC approved an advisory motion for the Boards consideration. This second motion states:

Should the Board of County Commissioners determine they want to keep the previously adopted annexation policy in the Florence Comprehensive Plan, they then should consider using this as the standard for which they will adopt future comprehensive plans with annexation policies.

This second motion is specifically in regard to the fourth provision added to the triple majority provisions as discussed below.

III. BACKGROUND

A. History

On December 21, 2009 the City of Florence adopted amendments to their Comprehensive Plan (Florence Realization 2020 Comprehensive Plan).

On December 1, 2010 the Board of County Commissioners adopted Ordinance PA 1249 (attached as Exhibit B) to co-adopt the Comprehensive Plan. This ordinance included language referred to as Annexation Policy #1, in Chapter 14: Urbanization, of the Comprehensive Plan dealing with annexations. The policy language adopted by the Board is different that the policy language that had already been adopted by the City of Florence.

On March 3, 2011 the City of Florence submitted a letter (attached as Exhibit C) to the Board of County Commissioners requesting reconsideration of the adopted policy and proposed the following new revised policy language for consideration.

Policy 1: The procedures of ORS 222.840 *et. seq.* (Health Hazard Abatement) shall be utilized when there are findings of a danger to public health. In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not

utilize annexation utilizing the "island annexation" procedures set forth by ORS 222.750.

On March 14, 2011 an email was submitted to the Board of County Commissioners from Daniel Stotter (attached as Exhibit D) in regard to the proposed revised language presented by the City of Florence. This email proposed some alternative language for Policy 1 as well.

The two primary concerns in regard to the policy language appear to be:

1. Addressing Health Hazard Abatement Annexations as provided for in ORS 222.840; and
2. The "Triple majority" consent annexation provisions of ORS 199.490(2)(a)(A).

On March 15, 2011 the Board of County Commissioners adopted a motion directing staff to try to incorporate the language acceptable with all parties and propose a process an amendment.

On September 6, 2011 the Lane County Planning Commission held a public hearing on the matter. The public record was held open until September 20, 2011 for submittal of additional public written testimony.

On October 4, 2011 the Lane County Planning Commission deliberated on the matter and adopted two motions to forward to the Board of County Commissioners as recommendations. Those recommendations are specified in this memo.

B. Discussion/Policy Issues

Health Hazard Abatement

The first part of the policy addresses if and/or when the procedures of ORS 222.840 *et. seq.*, known as the Health Hazard Abatement Law, can be utilized. The provisions of this State law allow annexation without a vote or consent of the owners of land therein, to address a danger to public health. The procedures include verification by the local board of health (in this case Lane County) of the conditions causing the danger to public health. Additionally, the procedures require the Oregon Health Authority to review and investigate the same conditions. The findings for a danger to public health have to be based on substantial evidence and ultimately are approved by the Director of the Oregon Health Authority.

The provisions of the Health Hazard Abatement law allows residents of an area to apply to the local board of health, or allows the local health board itself to initiate proceedings for annexation if they believe a danger to public health exists. The way the current County adopted policy is written it does not account for residents to initiate the Health Hazard Abatement provisions. Additionally, the current language states that the procedures shall be "...utilized when there are findings, approved by Lane County and the City of Florence..." This language seems to contradict the language of the State law in that the process first must be utilized or initiated to develop the findings, not the other way around. Ultimately, the requirements that there are findings of the danger to public health and that

the findings be based on substantial evidence is provided for in the state law and does not need to be restated in the policy language. The adopting and approving authority is also provided for in the State law.

Triple majority provisions

The “triple majority” statutory provisions of ORS 222.170 require written consent to annex land from:

1. More than half of the owners of land in the territory to be annexed;
2. That these owners own more than half of the land in the territory to be annexed; and
3. That these owners own real property within the territory to be annexed that represents more than half of the assessed value of all real property in the territory to be annexed.

The County added a fourth provision to their currently adopted policy, that is different from that of the City of Florence and from State law, that requires “consent of a majority of the electors registered within the territory proposed to be annexed.” In addition to creating inconsistency between the City and County policies, including this requirement does not account for if the proposed territory for annexation does not have any electors/voters. This provision is not compelled by state law and as it is currently adopted creates problems for an area to be annexed that does not have any electors.

One reason for including the additional requirement is that it can allow residents of rental property within an area proposed for annexation to consent or not when they may not otherwise have a voice in an annexation.

The City has requested that the fourth/additional requirement be removed. The newly proposed language from Mr. Stotter suggests adding more language to not require the fourth requirement if there are no electors within the proposed area. The Lane County Planning Commission recommends, consistent with the City of Florence’s request and State law, removing the extra (fourth) requirement from the adopted County policy.

C. Criteria/Analysis

Statewide Planning Goals.

Goal 1: Citizen Involvement [OAR 660-015-0000(1)]

- 3. Citizen Influence -- To provide the opportunity for citizens to be involved in all phases of the planning process.**

Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

FINDING:

The amendments are consistent with Goal 1 and all other applicable Statewide Planning Goals because the Department of Land Conservation and Development approved City of Florence Periodic Review Work Tasks 2, 3, 4, 5, 7, and 8 and found the previous amendments consistent with state statutes and administrative rules and statewide planning goals. The proposed amendment to Annexation Policy 1 does not affect that compliance and is otherwise consistent with state law.

The amendments are consistent with Statewide Planning Goal 1 because the amendments were advertised, notice was mailed, and citizens were given the opportunity to comment on the amendments in writing or in person at public hearings before the Planning Commission and the Board of County Commissioners.

Lane Code Chapter 12.050 Method for Adoption and Amendment.

- (1) The adoption of the comprehensive plan or an amendment to such plan shall be by an ordinance.
- (2) The Board may amend or supplement the comprehensive plan upon a finding of:
 - (a) an error in the plan; or
 - (b) changed circumstances affecting or pertaining to the plan; or
 - (c) a change in public policy; or
 - (d) a change in public need based on a reevaluation of factors affecting the plan; provided, the amendment or supplement does not impair the purpose of the plan as established by LC 12.005 above.

FINDING:

The request by the City of Florence and subsequently the direction provided by the Board of County Commissioners to initiate and process an amendment to the adopted policy language that attempts to be acceptable with all parties represents a change in public policy if a revised policy is adopted. Therefore, in conformance with the above standard, an amendment to the comprehensive plan in this case is found to be based on a change in public policy.

C. Alternatives

If the Board chooses to adopt a revised policy consistent with the LCPC recommendation and as requested by the City of Florence to remove the fourth requirement as part of the triple majority provision, the policy essentially just restates existing state law. Staff would suggest then that it may not be necessary for the policy to be revised from what is the existing adopted language by the City of Florence. The currently adopted City of Florence policy #1 language states:

- 1. The City will not use the Island Annexation provisions allowed by state law.

With the current city adopted policy, the city is acknowledging that the provision of ORS 222.750 will not be utilized by the City to force annexation of properties. All other allowable provisions for annexation under state law remain at the disposal of the City to

utilize. Additionally, it may be found that including language referencing the Health Hazard Abatement provision of state law is not necessary in the policy.

IV. RECOMMENDATION

Staff recommends approval of the language as recommended by the Lane County Planning Commission.

This recommended language is as follows:

Recommended language for a revised Policy #1 from LCPC:

The procedures of ORS 222.840 *et. seq.* (Health Hazard Abatement) shall be initiated if needed to remove dangers to public health. In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not utilize annexation utilizing the "island annexation" procedures set forth by ORS 222.750.

As an advisory motion to the Board, the LCPC also approved the following:

Should the Board of County Commissioners determine they want to keep the previously adopted annexation policy in the Florence Comprehensive Plan, they then should consider using this as the standard for which they will adopt future comprehensive plans with annexation policies.

V. ATTACHMENTS

- A. Ordinance No. PA 1289
- B. County adopted Ordinance No. PA 1249, December 10, 2010
- C. City of Florence letter to Lane County Commissioners, March 3, 2011
- D. Email from Daniel Stotter to Lane County Commissioners, March 14, 2011
- E. LCPC meeting minutes from 10/4/11
- F. Summary of Policy Language handout



PUBLIC WORKS DEPARTMENT
LAND MANAGEMENT DIVISION
3050 N. DELTA HIGHWAY
EUGENE, OREGON 97408-1636

Hasler

12/11/2012

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DEPT OF

DEC 12 2012

LAND CONSERVATION
AND DEVELOPMENT



ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OR 97301-2540

