



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

### NOTICE OF ADOPTED AMENDMENT

March 6, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Polk County Plan Amendment  
DLCD File Number 004-05



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: March 22, 2006**

This amendment was submitted to DLCD for review with less than the required 45-day notice because the jurisdiction determined that emergency circumstances required expedited review. 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 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 DATE SPECIFIED ABOVE.**

cc: Doug White, DLCD Community Services Specialist  
Gary Fish, DLCD Regional Representative  
Ron Eber, DLCD Farm/Forest Specialist  
Jim Allen, Polk County

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# FORM 2

DEPT OF

## DLCD NOTICE OF ADOPTION

MAR 02 2006

This form must be mailed to DLCD within 5 working days after the final decision  
per ORS 197.610, OAR Chapter 660 - Division 18

LAND CONSERVATION  
AND DEVELOPMENT

(See reverse side for submittal requirements)

Jurisdiction: Polk County Local File No.: LA 05-04  
(If no number, use none)

Date of Adoption: 3-1-06 Date Mailed: 3-1-06  
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 8-23-05

Comprehensive Plan Text Amendment  Comprehensive Plan Map Amendment

Land Use Regulation Amendment  Zoning Map Amendment

New Land Use Regulation  Other: \_\_\_\_\_

(Please Specify Type of Action)

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

Modify definitions to clarify that ownership of land  
that is separated by a deeded state highway prior  
to August 5, 1991 is considered separate parcels.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same.

Plan Map Changed from: \_\_\_\_\_ to \_\_\_\_\_

Zone Map Changed from: \_\_\_\_\_ to \_\_\_\_\_

Location: \_\_\_\_\_ Acres Involved: \_\_\_\_\_

Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable Statewide Planning Goals: none

Was an Exception Adopted? Yes: \_\_\_\_\_ No:

DLCD File No.: 004-05 (14618)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes:  No:

If no, do the Statewide Planning Goals apply. Yes:  No:

If no, did The Emergency Circumstances Require immediate adoption. Yes:  No:

Affected State or Federal Agencies, Local Governments or Special Districts: ODOT

Local Contact: Jim Allen Area Code + Phone Number: 503-623-9237

Address: 850 Mam St. City: Dallas

Zip Code+4: 97338 Email Address: allen.james@co.polk.or.us

## ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

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

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to [Mara.Ulloa@state.or.us](mailto:Mara.Ulloa@state.or.us) - **ATTENTION: PLAN AMENDMENT SPECIALIST.**

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3  
4 **BEFORE THE BOARD OF COMMISSIONERS FOR**  
5 **POLK COUNTY, OREGON**  
6

7 In the matter of Legislative )  
8 Amendment LA 05-04 to )  
9 Amend the Polk County Zoning )  
10 Ordinance and the Polk County )  
11 Subdivision and Partition )  
12 Ordinance for the definitions of )  
13 "Partition Land" and "Parcel" )  
14

15 **ORDINANCE NO. 06-04**  
16

17 **WHEREAS**, the Polk County Board of Commissioners received a request to evaluate  
18 the definition of "partition land" and "parcel" in the Zoning Ordinance and Subdivision and  
19 Partition Ordinance; and  
20

21 **WHEREAS**, the Polk County Planning Commission conducted a duly noticed public  
22 hearing on October 4, 2005 and received comments and testimony and deliberated with a  
23 recommendation in support of Legislative Amendment 05-04, as modified at that hearing; and  
24

25 **WHEREAS**, the Board of Commissioners received a recommendation in support of  
26 Legislative Amendment 05-04 from the Polk County Planning Division staff; and  
27

28 **WHEREAS**, the Board of Commissioners conducted a duly noticed public hearing on  
29 November 2, 2005, and provided for the opportunity for the submission of additional written  
30 testimony until November 14, 2005 regarding such proposed text amendments from interested  
31 citizens and considered all evidence and testimony; and  
32

33 **WHEREAS**, the Board of Commissioners, on November 23, 2005, publicly deliberated  
34 and approved the proposed text amendments as identified in Ordinance No. 06-04; now,  
35 therefore  
36

37 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**  
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39 Sec. 1. That Polk County adopts the Findings in Favor of the text amendments to the Polk  
40 County Zoning Ordinance as identified in the Staff Report as shown on Exhibit "A."  
41

42 Sec. 2. That Polk County amends the Polk County Zoning Ordinance as shown on Exhibit  
43 "A-1".  
44


45 Sec. 3. That Polk County amends the Polk County Subdivision and Partition Ordinance as  
46 shown on Exhibit "A-2".  
47  
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1  
2 Sec. 4 That Polk County determines that an emergency related to the economic welfare of  
3 the citizens of Polk County is declared and this ordinance is effective immediately upon passage.  
4

5 Dated this 1st day of March 2006, at Dallas, Oregon.  
6  
7

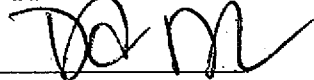
8 **POLK COUNTY BOARD OF COMMISSIONERS**  
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13 Mike Propes, Chair  
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17 Ron Dodge, Commissioner  
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22 Tom Ritchey, Commissioner  
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37 Approved as to Form:

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39 \_\_\_\_\_

40 David Doyle  
41 County Counsel  
42

43 First Reading: \_\_\_\_\_  
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45 Second Reading: \_\_\_\_\_  
46

47 Recording Secretary: \_\_\_\_\_

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# POLK COUNTY

**COMMUNITY DEVELOPMENT**

 POLK COUNTY COURTHOUSE \* DALLAS, OREGON 97338  
 503-623-9237 \* FAX 503-623-6009

 GENE CLEMENS  
 Director

 JIM ALLEN, AICP  
 Planning Director

## Staff Report

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<b>TYPE OF ACTION:</b>	A Legislative Amendment to amend the Polk County Zoning Ordinance to consider a proposal to modify the definitions to clarify that ownership of land that is separated by a deeded state highway prior to August 5, 1991 is considered separate parcels of land.
<b>APPLICABLE CRITERIA:</b>	Polk County Zoning Ordinance 115.060 and 110.452 and Polk County Subdivision and Partition Ordinance Sections 91.150(25) and 91.950.
<b>FILE NUMBER:</b>	Legislative Amendment 05-04
<b>STAFF CONTACT:</b>	Jim Allen

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### I. BACKGROUND AND PROCEEDINGS

Stephen F. Mannenbach proposed a concept and requested that Polk County revise the Polk County Zoning Ordinance for the definition of "Parcel" as shown on "Exhibit B".

The Polk County Board of Commissioners considered the concept on May 3, 2005 and again on June 28, 2005. The Board requested that Mr. Mannenbach draft a final proposal and provide it to Planning Division staff for review by the Planning Commission at a public hearing for consideration and a recommendation to the Board of Commissioners.

Polk County Counsel provided a memorandum on July 12, 2005 that provided an opinion regarding the legality of the proposal, and suggested changes as shown on "Exhibit C". The memorandum states that the current Oregon Revised Statutes 92.001(7)(d), that address this issue, were adopted on August 5, 1991, and that Polk County adoption of an ordinance that allowed recognition of parcels separated by a state highway prior to this date is not precluded by state law.

Two copies of the draft text amendments were provided to the Oregon Department of Land Conservation and Development on August 23, 2005, consistent with Oregon Revised Statutes 197.610. Planning Division staff prepared draft documents and made the documents available for consideration and distribution to the public on September 1, 2005. Notification was provided to area advisory committee members on September 6, 2005. Notification of the public hearing before the Planning Commission and Board of Commissioners was published in the Itemizer-Observer Newspaper on September 14, 2005.

Notification of this legislative proceeding has been fulfilled pursuant to Polk County Zoning Ordinance (PCZO) Section 111.370. Pursuant to PCZO 115.040, the Planning Commission conducted a public hearing and recommended adoption, as modified at the public hearing, to the Board of Commissioners. The Planning Commission public hearing was completed October 4, 2005. The Board of Commissioners public hearing is scheduled for November 2, 2005.

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## II. CRITERIA FOR LEGISLATIVE PLAN AMENDMENTS

A legislative plan amendment may be approved provided that the request is based on substantive information providing a factual basis to support the change. In amending the Comprehensive Plan, Polk County shall demonstrate:

- (A) **Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]**

Findings: This amendment would be valid for all properties within unincorporated Polk County and therefore, this is a legislative action and is being reviewed under the appropriate procedures for legislative amendments that are required by the Polk County Zoning Ordinance. The proposed Zoning Ordinance and Subdivision and Partition Ordinance amendments would modify the definition of "parcel" and "partition". The amendment would clarify that property that was separated by a deed for state highway, county road, city street, or other right of way prior to August 5, 1991 is considered a separate parcel of land. Applicable provisions of Oregon Revised Statutes Chapter 92 that were adopted on August 5, 1991 are referenced as "Exhibit D". There are no other Oregon Revised Statutes, Statewide Planning Goals, or Administrative Rules that are applicable to the text amendment. Staff identified text amendments that would be appropriate are shown on "Exhibits A1-A2". Additional provisions that are related from the Polk County Zoning Ordinance and the Polk County Subdivision and Partition Ordinance are shown on "Exhibit A-3". Related provisions from Oregon Revised Statutes are shown in "Exhibit A-4".

- (B) **Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]**

- **Polk County shall ensure that residents of unincorporated communities have adequate opportunities to participate in all phases of the planning process and in accordance with the Citizen Involvement chapter of this Plan. [PCCP Element I, Unincorporated Communities Policy 1.9]**
- **Polk County will coordinate with Area Advisory Committees to ensure timely opportunities for AAC participation and comment in the development, review, adoption and implementation of land use decisions and actions in Polk County. [PCCP Element A, Citizen Involvement, Policy 1.8]**

Findings: A public involvement process was initiated as part of this proposed text amendment. Prior to commencement of the public hearing process, the Polk County Planning Division provided notification of the proposed text amendments to each area advisory committee, the Committee for Citizen Involvement, and published a legal advertisement in the Itemizer – Observer Newspaper. Notice was also provided to the Polk Soil and Water Conservation District and local government departments. The Polk County Planning Commission conducted a public hearing and received testimony in favor of the concept and received recommendations to improve the text amendments for added clarity and consistency with ORS provisions. The Planning Commission agreed with clarifications and corrections to statutory references.

- (C) **That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]**

Findings: The public benefit of the proposed Zoning Ordinance text amendments would be clarification of how the statutory provisions are implemented locally by Polk County for parcels

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bisected by a state highway, county road, or city street. The proposed text would clarify that a property bisected by a state highway, county road, or city street would be considered separate parcels when the state highway, county road, or city street was deeded prior to August 5, 1991.

**(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]**

Findings: The proposed text amendments would apply to all properties equally that are located outside of or within an urban growth boundary. The provisions would not be limited by or prohibited by any current intergovernmental agreement.

**RECOMMENDATION:**

1. The Planning Commission recommended that the Board of Commissioners adopt amendments to the Polk County Zoning Ordinance (PCZO) and the Polk County Subdivision and Partition Ordinance (PCSO) for a change in the definition of "parcel" and "partition". Staff provides the following alternatives for consideration of adoption of text amendments:
  - a. Recommend adoption of the text amendments to the Polk County Zoning Ordinance (PCZO 110.427 and 110.452) and Polk County Subdivision and Partition Ordinance (PCSO 91.150(25), as shown on Exhibits A-1 and A-2.
2. Do not adopt text amendments at this time.
3. Other, as described by the Board of Commissioners.

**EXHIBITS:**

- "A-1" Zoning Ordinance text amendments for PCZO 110.427 and 110.452.
- "A-2" Subdivision and Partition Ordinance text amendments for PCSO Section 91.150(25).
- "A-3" PCZO Section 110.315 and PCSO 91.950 and 91.955.
- "A-4" Oregon Revised Statutes 92.010(7), "partition land" definition.
- "B" Proposed text amendments presented by Stephen F. Mannenbach.
- "C" Polk County Counsel provided a memorandum on July 12, 2005 that provided an opinion regarding the legality of the proposal, and suggested changes.
- "D" Applicable provisions of Oregon Revised Statutes Chapter 92 that were adopted on August 5, 1991.
- "E" Comments and recommendations from Kelly Gordon received at the Planning Commission hearing.

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**Polk County Zoning Ordinance recommended amendments:**

**110.427. PARCEL.** "Parcel" includes a unit of land created:

- (A) By partitioning land as defined in ORS 92.010;
- (B) In compliance with all applicable planning, zoning or partitioning ordinances or regulations;
- (C) By deed or sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations; or
- (D) By deed or sales contract, if the property division occurs as a result of a grant to a public agency or public body for state highway, county road, city street, or other right of way purposes provided such deed or sales contract occurred on or prior to August 4, 1991. The property conveyed to the public agency or public body shall be deemed a separate parcel, and the remnant shall be deemed a separate parcel. If the conveyance bisects a property, each remnant located on either side of the parcel conveyed to the public agency or public body shall be considered separate parcels.
- (E) A parcel so created shall remain a discrete parcel, unless the parcel lines are vacated, or the parcel is further divided, as provided by law.

**110.452. PARTITION LAND.** To divide land into two or three parcels within a calendar year, but does not include:

- (A) A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;
- (B) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance;
- (C) The division of land resulting from the recording of a subdivision or condominium plat; or
- (D) A sale or grant on or after August 5, 1991 to a public agency or public body for state highway, county road, city street or other right of way purposes provided that such road or right of way complies with the applicable comprehensive plan and ORS 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.

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**Polk County Subdivision and Partition Ordinance recommended amendments:**

91.150(25) "Partition Land." To divide a parcel into two or three parcels within a calendar year when such parcel exists at the beginning of such year. "Partition land" does not include:

- (a) Divisions of land resulting from lien foreclosures or foreclosure of a recorded contract for the sale of real property;
- (b) Divisions of land resulting from the creation of cemetery lots;
- (c) Adjustment of a property line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum size established by any applicable zoning ordinance;
- (d) The division of land resulting from the recording of a subdivision or condominium plat;
- (e) A sale or grant on or after August 5, 1991 to a public agency or public body for state highway, county road, city street or other right of way purposes provided that such road or right of way complies with the applicable comprehensive plan and ORS 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned; or
- (f) A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.

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