



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

December 12, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Douglas County Plan Amendment
DLCD File Number 015-07



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: December 28, 2007

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Doug White, DLCD Community Services Specialist
John Renz, DLCD Regional Representative
Mark Bernard, Douglas County

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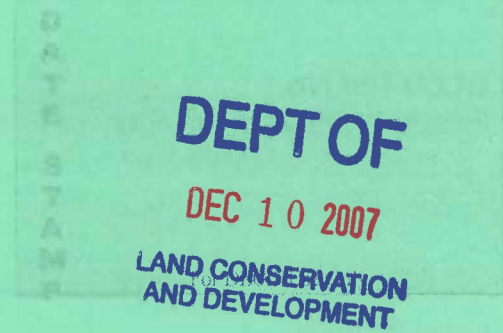
FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed



Jurisdiction: **Douglas County**

Local file number: **None**

Date of Adoption: **12/5/2007**

Date Mailed: **12/7/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 9/27/07

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".

Legislative amendments to implement new laws passed by the 2007 State Legislature and miscellaneous minor clarifications to improve the LU&DO.

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

The adopted ordinance contains two minor revisions to the initial proposal. The first change involves the definition of a Utility Easement in response to HB 2713. The second change involves further clarification of the scope of a new local provision governing drainage assessment.

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

to: **N/A**

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

to: **N/A**

Location: **N/A**

Acres Involved: **0**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

1 **2** **3** **4** **5** **6** **7** **8** **9** **10** **11** **12** **13** **14** **15** **16** **17** **18** **19**

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-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

015-07(16434)

DLCD file No. _____

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

Local Contact:

Phone: () - Extension:

Address:

Fax Number: - -

City:

Zip:

E-mail Address:

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 Complete Copies** (documents and maps) 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. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
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 now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also 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** - ATTENTION: PLAN AMENDMENT SPECIALIST.

DOUGLAS COUNTY OREGON
FILED

DEC 6 2007

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, OREGON

BARBARA E. MIELSEN, COUNTY CLERK

AN ORDINANCE ADOPTING)
AMENDMENTS TO THE DOUGLAS) **ORDINANCE 2007-12-03**
COUNTY LAND USE AND)
DEVELOPMENT ORDINANCE)

RECITALS:

- A. Amendments to the Douglas County Land Use and Development Ordinance (LU&DO) are needed due to laws passed by the 2007 Oregon State Legislature and additional amendments are needed which clarify and enhance the utility of the Ordinance.
- B. On November 15, 2007, the Douglas County Planning Commission held a hearing and recommended that the amendments be adopted by the Board of Commissioners.

THE DOUGLAS COUNTY BOARD OF COUNTY COMMISSIONERS ORDAIN AS FOLLOWS:

SECTION ONE: The amendments contained and referenced in the green attachment titled "Land Use and Development Ordinance Amendments" SECOND DRAFT dated November 15, 2007.

SECTION TWO: The amendments are necessary and appropriate and shall become effective on January 7, 2008.

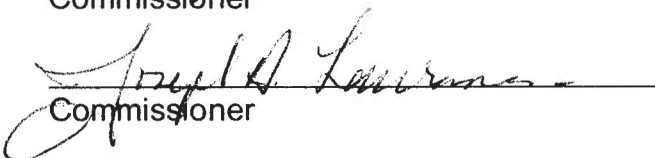
SECTION THREE: SEVERABILITY; If any provision of this ordinance is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of the ordinance. The ordinance shall be construed as if such invalid provision had never been included.

DATED this 5th day of December, 2007

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, OREGON


Chair


Commissioner


Commissioner

REVIEWED AS TO FORM

By 
Office of County Legal Counsel

Date: 
11/30/07

**LAND USE
and
DEVELOPMENT ORDINANCE
AMENDMENTS**

SECOND DRAFT

November 15, 2007

Planning Commission
November 15, 2007

Board of Commissioners
December 5, 2007

Land Use & Development Ordinance Amendments

November 15, 2007

AMENDMENTS RESULTING FROM LAWS PASSED BY THE 2007 OREGON STATE LEGISLATURE

1. **Measure 37 exemptions: SB 239** makes revisions to ORS 197.352 (Measure 37) by exempting several regulatory uses from the compensation provisions of Measure 37. Enforcement of land use regulations related to agricultural quarantines and embargoes, and animal and plant disease control are now exempt from compensation under Measure 37. A waiver cannot be granted for relief from such regulations.
◆ ◆ **Effect: clarification**

CHAPTER 10, REAL PROPERTY COMPENSATION — REVISE SECTION 10.020 BY ADDING AN ITEM f. TO THE DEFINITION OF “EXEMPT LAND USE REGULATION” AS FOLLOWS:

EXEMPT LAND USE REGULATION: means a land use regulation that:

- f. Is exempted by State Statute. Uses exempted by statute include: agricultural quarantines and embargoes, and certain animal and plant disease controls (SB239 enacted by the 2007 Legislature).

2. **150 Day Rule: SB 311** amends ORS 215.427 (the 120/150 Day Rule) which delineates time limits for County completion of the local land use process when initiated by application. By law, counties have 120 days to make a final local decision on UGB and mineral/aggregate applications, and 150 days for all other applications except Plan Amendments (which have no set time limit). SB311 revises the process for dealing with incomplete applications and sets a 180 day time limit for an applicant to submit a response when notified by the County that their application is incomplete. If the applicant does not submit a written response within 180 days, the application then becomes void on the 181st day. The bill also limits extension requests from applicants to a total of 215 days. — Though not addressed in the LU&DO, the County is vigilant in maintaining full compliance with all provisions of the 150 Day Rule. However, the new provisions dealing with incomplete applications are now the law, and are important for every applicant to understand. To increase client awareness, the LU&DO should be amended to include the statutory process for dealing with an incomplete application. ◆ ◆ **Effect: new regulation**

REVISE SECTION 2.060, “APPLICATION”, BY ADDING A NEW ITEM 6. TITLED “COMPLETENESS REVIEW” AS FOLLOWS:

SECTION 2.060 Application

6. Completeness Review: When an application is submitted, and received by the Planning Department, staff shall review the application for completeness. The completeness review shall be concluded within a reasonable period of time, not to exceed 30 days from the date the application was received.
 - a. Complete application: If the application is deemed complete, the Department shall sign and date the application, specifying the date it was determined to be complete. The land use action process shall begin, and be subject to statutory time limits, on the date the application was determined to be complete.
 - b. Incomplete application: If an application is determined to be incomplete, the County shall notify the applicant in writing, within 30 days of the date the application was received, to specify exactly what information is missing, and to allow the applicant up to 180 days from the date the application was initially received to submit a written response. The application shall be deemed complete for the purpose of initiating the land use action process when the County receives, in writing, one of the following:
 - (1) All of the missing information;
 - (2) Some of the missing information and written notice from the applicant that no other information will be provided; or
 - (3) Written notice from the applicant that none of the missing information will be provided.
 - c. On the 181st day after first being received by the County, an incomplete application shall be void, if the applicant was notified of the missing information and failed to respond in writing as provided in 6.b. above with no opportunity for a refund of the application fee.
 - d. Once the land use action process is initiated, and notwithstanding the time frame for a Director's decision at §2.090 and §2.100, the County shall make its final local decision within the time frame specified in ORS 215.427.
 - e. The statutory time limit for making a final local decision (150/120 days) may be extended, upon written request from the applicant, as long as the total of all such extensions does not exceed 215 days.

3. **School Facility Plan: SB 336** amends ORS 195.110 by revising the existing requirements for a "School Facility Plan" that is to be prepared by "large school districts" in cooperation with the City and County in which they are located. Instead of "high growth" school districts with over 5,000 students, the bill increases the threshold for a School Facility Plan by requiring it for "large" school districts with over 2,500 students. The Roseburg School District is the only "large" school district in the County, and they are currently drafting a School Facility Plan to address the new statutory requirements. Deadline for completion of the Roseburg school facility plan is Jan 1, 2010 (2 yrs from date the law went into effect), but it could be completed anytime before that date.

SB336 contains two requirements that need to be incorporated into the LU&DO. First, the law requires that notice of Plan or land use regulation amendments that significantly impact school capacity must be provided to large school districts. This notice requirement will go into effect (sometime within the next two years) after adoption of the Roseburg School Facility Plan. Provisions of SB336 require that the School Facility Plan must contain objective criteria for determining whether school capacity exists to accommodate projected development. Second, the law contains criteria for denial of a request for residential development based on school capacity issues. These denial criteria will become effective when the Roseburg School Facility Plan is formally adopted by the County as an element of the Comprehensive Plan. The notice and denial criteria provisions could go into effect soon. The LU&DO should be amended now to incorporate those provisions of the new law.

◆ ◆ **Effect: new regulation**

A. REVISE SECTION 2.065, "NOTICE", BY AMENDING ITEM 1.d. AS FOLLOWS:

SECTION 2.065 Notice

1. At least twenty (20) days prior to the date of a quasi-judicial public hearing under §2.060.3.a, b, c and e, and §2.060.4.a, b, c, e and f, notice shall be sent by mail to:

[no change to a. thru c.]

- d. Any public school district, and any other affected governmental agency which has entered into an agreement with Douglas County to coordinate planning efforts and to receive notices of such hearings.

B. REVISE SECTION 2.100, "ADMINISTRATIVE ACTION PROCEDURE OF THE DIRECTOR", BY ADDING A NEW ITEM 4. AS FOLLOWS:

SECTION 2.100 Administrative Action Procedure of the Director

4. The Director, and if referred or appealed, the Planning Commission or Board of Commissioners, may deny an application for residential development based on a lack of school capacity if:
 - a. The school capacity issue was raised by the affected school district;
 - b. The lack of school capacity is based on a School Facility Plan that has been jointly adopted by the school district and the County governing body; and
 - c. The County has considered options to address school capacity.

C. REVISE SECTION 6.700, REGARDING PLAN AMENDMENT HEARINGS, BY ADDING A NEW ITEM 1. AFTER THE FIRST PARAGRAPH, AS FOLLOWS:

SECTION 6.700 Hearing

The Commission or Hearings Officer shall conduct a public hearing on the proposed Plan Amendment and, if the proposed Amendment is combined with an application for Administrative Action, the Commission or Hearings Officer may conduct any other required hearing simultaneously with the Plan Amendment. The hearing shall be conducted pursuant to the provisions of Chapter 2 of this ordinance.

1. The Commission or Hearings Officer may deny a Plan Amendment application for residential development based on a lack of school capacity if:
 - a. The school capacity issue was raised by the affected school district;
 - b. The lack of school capacity is based on a School Facility Plan that has been jointly adopted by the school district and the County governing body; and
 - c. The County has considered options to address school capacity.

4. **Landscape contracting business: HB 2117** revises ORS 215.283(2), the list of nonfarm uses that may be established subject to approval, in the EFU zone. The Legislature always seems to revise or add uses to the EFU zone, and 2007 was no exception. HB2117 revises the name "landscaping business" to "landscape contracting business". The bill language seems to indicate that the revision was intended to resolve business licensing issues in the Portland area . . . but using the one size fits all approach, the change applies to Douglas County. Articles 3 and 4 of the LU&DO need to be revised, to insert the new wording of "landscape contracting business" in the list of conditionally permitted uses. ♦ ♦ **Effect: clarification**

A. REVISE SECTION 3.3.100, THE LIST OF CONDITIONAL USES IN THE FG ZONE, BY REVISING

ITEM 20, AS FOLLOWS:

20. A ~~landscaping~~ landscape contracting business or a business providing landscape architecture services, as defined in ORS 671, provided that the business is part of an operation involved in the growing and marketing of nursery stock on land that constitutes farm use.

B. REVISE SECTION 3.4.100, THE LIST OF CONDITIONAL USES IN THE FC ZONE, BY REVISING ITEM 20, AS FOLLOWS:

20. A ~~landscaping~~ landscape contracting business or a business providing landscape architecture services, as defined in ORS 671, provided that the business is part of an operation involved in the growing and marketing of nursery stock on land that constitutes farm use.

5. **Biomass and biofuel energy:** **HB 2210** is the 2007 Legislature's most prominent bill dealing with energy. Among other things, the bill adds a new EFU use to ORS 215.283 and adds to the definition of "farm use" in ORS 215.203. The Legislature's intent is to allow on-farm processing of farm crops to produce biofuel. The new provisions are designed to encourage the gathering of biomass resources (e.g. organic matter such as wood waste, agricultural residues, animal bi-products, food waste, yard debris, wastewater solids, crops grown for energy production, etc) to produce biofuels (such as bioethanol and biodiesel) for use in fuel blends consisting of gasoline plus biofuel. The bill sets target dates for achieving various fuel blend percentages for all gasoline or diesel sold in Oregon. The bill also creates a hierarchy in the intensity of land uses involved in the processing of biofuels, from that which is outright permitted – to those that are conditionally permitted and require notice and the opportunity for a hearing. The LU&DO needs to be amended to accommodate the various land use provisions in the bill. ♦ ♦ **Effect: deregulation**

A. REVISE SECTION 1.090, DEFINITIONS, BY REVISING THE 3RD PARAGRAPH IN THE DEFINITION OF "FARM USE", DEALING WITH "CURRENT EMPLOYMENT", TO ADD NEW PROVISIONS RELATED TO BIOFUEL PROCESSING AND TO BRING THE LU&DO DEFINITION OF "FARM USE" INTO CONFORMANCE WITH OTHER PARTS OF THE STATUTORY DEFINITION, AS FOLLOWS:

"Current employment" of land for farm use includes: (a) farmland, the operation or use of which is subject to any farm-related government program; (b) land lying fallow for one year as a normal and regular requirement of good agricultural husbandry; (c) land planted in orchards or other perennials, other than the land specified in subparagraph (d) of this paragraph, prior to maturity; (d) land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years; ~~(e) any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land specially assessed at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;~~ (f) (e) wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used

for any economic farm use; ~~(g)~~ (f) except for land under a single family dwelling, land under buildings supporting accepted farm practices, ~~excepting land under a single family dwelling,~~ including the processing facilities allowed by ORS 215.283(1)(u) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.283(2)(a); ~~(h)~~ (g) water impoundments lying in or adjacent to and in common ownership with farm use land; ~~and;~~ (h) any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use; (i) land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family (illness includes injury or infirmity whether or not such illness results in death); ~~(j)~~ (j) any land described under ORS 321.267(3) or 321.824(3); (k) land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training of greyhounds for racing; and, (l) land used for the processing of farm crops into biofuel, if: 1) only the crops of the landowner are being processed, 2) the biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner, or 3) the landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

B. *REVISE SECTION 1.090, DEFINITIONS, BY INCLUDING NEW DEFINITIONS OF "BIOFUEL" AND "BIOMASS", AS FOLLOWS:*

BIOFUEL: Liquid, gaseous or solid fuels derived from biomass.

BIOMASS: Organic matter that is available on a renewable or recurring basis and that is derived from: forest or rangeland woody debris from harvesting or thinning; wood material from hardwood timber; agricultural residues; offal and tallow from animal rendering; collected food wastes; collected yard or wood debris; wastewater solids; or crops grown solely to be used for energy.

C. *REVISE SECTION 1.090, DEFINITIONS, BY AMENDING THE DEFINITION OF "COMMERCIAL ACTIVITIES IN CONJUNCTION WITH FARM USE" BY ADDING A NEW ITEM L., AS FOLLOWS:*

COMMERCIAL ACTIVITIES IN CONJUNCTION WITH FARM USE: The processing, packaging, treatment and wholesale distribution and storage of a product primarily derived from farm activities on the premises, excluding the statutorily allowed "facility for the processing of farm crops". Also, retail sales of agricultural products, supplies and services directly related to the production and harvesting of agricultural products. Such uses include the following:

[no change to items a. thru k.]

- I. Processing of farm crops into biofuel not permitted under the definition of "farm use", and not meeting the standards of a "facility for the processing of farm crops" in Sections 3.3.075 and 3.4.075.

D. *REVISE SECTION 3.3.100, THE LIST OF CONDITIONAL USES IN THE FG ZONE, BY MOVING*

ITEM NO. 17 TO SECTION 3.3.075 (USES PERMITTED WITH STANDARDS IN THE FG ZONE) AND RENUMBERING THE ITEMS THAT FOLLOWED, AND ADDING A NEW ITEM 13 IN 3.3.075, AS FOLLOWS:

SECTION 3.3.100 Buildings and Uses Permitted Conditionally

- ~~17. A facility for the processing of farm crops, provided that:~~
- ~~a. The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility;~~
 - ~~b. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farms use; or, if an existing farm building is used, no more than 10,000 square feet shall be devoted to processing activities within that building; and~~
 - ~~c. A land division separating the processing facility from the farm operation on which it is located shall not be permitted.~~

SECTION 3.3.075 Uses Permitted with Standards

13. A facility for the processing of farm crops or the production of biofuel, provided that:
- a. The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility;
 - b. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use; or, if an existing farm building is used, no more than 10,000 square feet shall be devoted to processing activities within that building; and
 - c. A land division separating the processing facility from the farm operation on which it is located shall not be permitted.

E. REVISE SECTION 3.4.100, THE LIST OF CONDITIONAL USES IN THE FC ZONE, BY MOVING ITEM NO. 17 TO SECTION 3.4.075 (USES PERMITTED WITH STANDARDS IN THE FC ZONE) AND RENUMBERING THE ITEMS THAT FOLLOWED, AND ADDING A NEW ITEM 13 IN 3.4.075, AS FOLLOWS:

SECTION 3.4.100 Buildings and Uses Permitted Conditionally

- ~~17. A facility for the processing of farm crops, provided that:~~

- a. ~~The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility;~~
- b. ~~The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farms use; or, if an existing farm building is used, no more than 10,000 square feet shall be devoted to processing activities within that building; and~~
- c. ~~A land division separating the processing facility from the farm operation on which it is located shall not be permitted.~~

SECTION 3.4.075 Uses Permitted with Standards

- 13. A facility for the processing of farm crops or the production of biofuel, provided that:
 - a. The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility;
 - b. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use; or, if an existing farm building is used, no more than 10,000 square feet shall be devoted to processing activities within that building; and
 - c. A land division separating the processing facility from the farm operation on which it is located shall not be permitted.

- 6. **Utility easements: HB 2713** revises ORS Chapter 92 which deals with Subdivisions and Partitions. The bill amends ORS 92.010(18) regarding the definition of "utility easement", and ORS 92.044(7) concerning the location of utility infrastructure. HB2713 authorizes utility easements for private utility infrastructure, and also prohibits placement of public or private utility infrastructure within one foot of a survey monument delineated on a subdivision or partition plat. The LU&DO needs to be amended to reflect these new provisions of law. ♦ ♦ **Effect: new regulation**

A: *REVISE SECTION 1.090, DEFINITIONS, BY AMENDING THE DEFINITION OF "UTILITY EASEMENT", AS FOLLOWS:*

UTILITY EASEMENT: An easement noted on a subdivision plat or partition plat for the purpose of installing or maintaining public or private utility infrastructure for the provision of water, sewer, storm drains, power, heat or telecommunications to the public. Unless specifically requested by a public or private utility provider, the decision making authority may not require a utility easement except for a utility easement abutting a street. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or

partition plat. The decision making authority may not place additional restrictions or conditions on a utility easement granted under these provisions. [This definition is derived from revisions to ORS Chapter 92 in HB 2755 enacted by the 2005 State Legislature, and subsequently by the 2007 Legislature in HB 2713.]

7. **Unlawful units of land: HB 2723** amends ORS Chapter 92 by establishing a process to validate some units of land that were sold or transferred unlawfully. The provisions of this bill may help to resolve the legality of some, but not all, illegal units of land — i.e. unlawful units that could have been legally created at the time they were sold or transferred can be validated through this legislation. Other units can be validated, but only if the County issued a building permit for development on the unit of land after it was initially sold or transferred [note: due to the complexity of tracking the legal status of units of land, it is possible for a land use agency to have issued a permit for development on a unit of land that is technically not eligible for such a permit]. Even though the provisions of this new law exclude illegal units sold or transferred after January 1, 2007, it may be helpful for some clients. As another useful problem solving tool, the County should amend LUDO Article 37 to incorporate the new provisions for validating certain illegal units of land. ♦ ♦ **Effect: deregulation**

*REVISE ARTICLE 37, NONCONFORMING USE, BY ADDING A NEW SECTION 3.37.580
"VALIDATION OF AN UNLAWFUL UNIT OF LAND", AS FOLLOWS:*

SECTION 3.37.580 Validation of an Unlawful Unit of Land

A unit of land that was not lawfully established at the time it was sold or transferred may be validated, or a building permit may be authorized, under the provisions of this section and as provided in ORS Chapter 92.

1. Validation of Unlawful Units of Land:
 - a. Validation by potential compliance under prior laws: The Director may approve an application to validate a unit of land that was initially created in violation of this ordinance (i.e. by a sale or transfer that did not comply with the applicable standards for creation of a parcel), if the unit of land:
 - i. Is not a lawfully established unit of land as defined in ORS 92.010; and
 - ii. Could have complied with the applicable criteria for a land division in effect when the unit of land was initially sold or transferred.
 - iii. If the above two provisions are met, the property owner may submit a land partition application to initiate the validation process. A partition application under this section is not subject to the minimum lot or parcel size requirements of ORS 215.780, but

is subject to the provisions of Section 2.060.1 or 2.060.2 as appropriate. The subject unit of land shall be deemed validated upon preliminary approval of the partition application. The validated unit of land shall become a lawfully established parcel for the purpose of sale or transfer only if:

- a) The owner or applicant receives final approval of the partition plat, and
- b) The plat is recorded at the County Clerks Office no later than 90 days after the validation date (date of preliminary approval).

iv. A request for development authorization on the newly established lawful parcel is subject to the laws and rules in effect when the request is made.

b. Validation by prior permit issuance: Notwithstanding subsection 1.a. of this section, the Director may approve an application to validate a unit of land that was initially created in violation of this ordinance, if the County approved a permit authorizing construction or placement of a dwelling or other building on the subject unit of land after it was sold or transferred in violation of this ordinance (but not after January 1, 2007).

i. If a permit was issued as described in subsection 1.b. above, the property owner may submit a land partition application to initiate the validation process. A partition application under this section is not subject to the minimum lot or parcel size requirements of ORS 215.780, but is subject to the provisions of Section 2.060.1 or 2.060.2 as appropriate. The subject unit of land shall be deemed validated upon preliminary approval of the partition application. The validated unit of land shall become a lawfully established parcel for the purpose of sale or transfer only if:

- a) The owner or applicant receives final approval of the partition plat, and
- b) The plat is recorded at the County Clerks Office no later than 90 days after the validation date (date of preliminary approval).

ii. A request for development authorization on the newly established lawful parcel is subject to the laws and rules in effect when the request is made.

iii. If the County approved a permit authorizing construction or

placement of a dwelling on the subject unit of land after it was sold or transferred in violation of this ordinance, and the dwelling is located in the TR, FF or AW zone, it qualifies for replacement under Section 3.2.050.

- c. The County shall not approve an application to validate a unit of land under the standards in this subsection if the unit of land was initially sold or transferred in violation of this ordinance after January 1, 2007.

2. Issuance of Building Permits for Unlawful Units of Land:

- a. The Director may approve an application under Sections 2.060.1 or 2.060.2 of this ordinance, or authorize development approval, for the continued use of an existing dwelling or other building on a unit of land that was not lawfully established if:
 - i. The dwelling or other building was lawfully established prior to January 1, 2007, and
 - ii. The approved permit or development authorization does not change or intensify the use of the dwelling or other building.

8. **Closure of a manufactured dwelling park: HB 2735** seems to mirror what Douglas County considered in it's hearings for closure and redevelopment of Saddle Butte Mobile Manor. The new law has provisions related to tenant notice and payment for moving expenses that look very similar to what was proposed in the Planning Department Staff Report for Saddle Butte. This new law deals with a wide array of issues related to the closure of a manufactured dwelling park, or the conversion of a manufactured dwelling park to a subdivision, including provisions for tenant notice and payment to tenants. Two sections in the LU&DO need to be revised in order to comply with provisions of this bill. ♦ ♦ **Effect: new regulation**

A. REVISE SECTION 2.065, NOTICE, TO INCLUDE A NEW ITEM #15, AS FOLLOWS:

SECTION 2.065 Notice

15. Closure of a manufactured dwelling park, portion of a manufactured dwelling park, or closure of a residential marina, is subject to the notice and tenant payment provisions in ORS Chapter 90. Such notice, and the subsequent tenant payment provisions, is to be provided by the landlord or owner of the manufactured dwelling park or residential marina. The notice of closure shall be provided to tenants of the manufactured dwelling park or residential marina at least 365 days prior to termination of the tenants space rental agreement.

B. REVISE SECTION 3.51.200.1, APPLICATION FOR CONVERSION OF A MANUFACTURED DWELLING PARK TO A SUBDIVISION, BY AMENDING ITEM 1.C. AS FOLLOWS:

1. **Application for Tentative Plan Approval**

[no change to items a, b, d, or e]

- c. Notice of the proposed park subdivision shall be mailed to those entitled to notice as provided in Section 2.065 of this Ordinance and to the Oregon Real Estate Commission. Notice shall also be mailed by the County to tenants who currently reside within the boundary of the proposed park subdivision. Additional notice and tenant payment provisions (as appropriate), meeting the standards of ORS Chapter 90, shall be provided by the landlord or owner of the manufactured dwelling park at least 180 days prior to termination of the tenants space rental agreement.

9. **Division of forest land for park or conservation uses: HB 2992** revises existing standards relating to the division of forest land for public park or conservation uses. This particular division opportunity (currently found in the LU&DO at 3.2.200.1(5) for the TR Zone and at 3.5.200.1(5) for the FF Zone) is rarely used in Douglas County. — Generally, this division opportunity allows a property owner to create two parcels in a forest zone, allowing both parcels to be smaller than the minimum parcel size, and one of the parcels must be sold to a park or conservation agency. — In any case, this bill tightens up existing provisions, making it more difficult for an applicant to gain approval. The bill requires that if the non-park parcel does not have a dwelling, it has to be eligible for one of the forest dwelling opportunities (meaning: without a dwelling, the non-park parcel would have to consist of at least 160 acres). For the conservation parcel, the prior 25 acre size limit is removed, but the park or conservation agency now has to file a deed restriction that eliminates the possibility of ever receiving approval for a dwelling. Though seldom used, this division opportunity still may be useful to someone at sometime. Therefore, this division opportunity in the TR and FF zones needs to be revised. ♦ ♦ **Effect: new regulation / deregulation**

A. *REVISE SECTION 3.2.200.1, PROPERTY SIZE STANDARDS IN THE TR ZONE, BY AMENDING ITEM b.(5), DIVISION OF LAND FOR PUBLIC PARK USES, AS FOLLOWS:*

SECTION 3.2.200 Property Development Standards

1. **Property Size:**

[no change to a.]

- b. The following exceptions may apply:

[no change to items (1) thru (4)]

- (5) Division of land for public park open space uses provided that only two parcels are created, and the land division is for the purpose of allowing a provider of public parks or open space, or a

not-for-profit land conservation organization, to purchase at least one of the resulting parcels, ~~and~~

- i. The parcel that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:
 - a) If one of the resulting parcels contains a dwelling or another use allowed under ORS chapter 215, that the parcel shall be large enough to support continued residential use or other allowed use of the parcel; or
 - b) If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling under ORS 195.120 for a park related dwelling, or is eligible for siting any dwelling authorized in the TR Zone, based on the size and configuration of the parcel.

- ii. The parcel created for the purpose of being sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following: ~~park or open space uses shall not contain a dwelling, and:~~
 - a) Prior to final approval, the provider of public parks or open space or the not-for-profit land conservation organization shall record at the Clerks Office and submit to the Planning Department, an irrevocable deed restriction that prohibits the provider or organization and their successors in interest: ~~is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;~~
 - (1) from establishing a dwelling on the parcel or developing the parcel for any use not authorized in the TR Zone except park or conservation uses; and
 - (2) from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

- iii. If the division of land proposed under this section would result in the disqualification of a parcel for a special assessment described in ORS 308A.718 or the withdrawal

of a parcel from designation as riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS 308A.371 or 308A.700 to 308A.733 prior to the County granting final approval of the land division.

- ~~b) may not be considered in approving or denying an application for siting any other dwelling;~~
- ~~c) may not be considered in approving a redesignation or rezoning of forest lands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and~~
- ~~d) may not be smaller than 25 acres unless the purpose of the land division is:
 - ~~i) to facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or~~
 - ~~ii) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of a least 2,000 acres of open space or park property.~~~~

B. REVISE SECTION 3.5.200.1, PROPERTY SIZE STANDARDS IN THE FF ZONE, BY DELETING ITEM b.(5), DIVISION OF LAND FOR PUBLIC PARK USES, AND REPLACING THE DELETED ITEM WITH A REFERENCE TO THE SAME PROVISION IN THE TR ZONE, AS FOLLOWS:

SECTION 3.5.200 Property Development Standards

1. **Size:** The creation of a lot or parcel shall be subject to the following:

[no change to a.]

- b. The following exceptions may apply:

[no change to items (1) thru (4)]

- (5) Division of land for open space uses as provided in Section 3.2.200.1.b.(5).

Division of land for public park uses provided that:

- ~~i. The land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land~~

~~conservation organization, to purchase at least one of the resulting parcels; and~~

- ~~ii. If one of the resulting parcels contains a dwelling, that parcel shall be large enough to support continued residential use of the parcel.~~
- ~~iii. The parcel created for park or open space uses shall not contain a dwelling, and:
 - ~~a) is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;~~
 - ~~b) may not be considered in approving or denying an application for siting any other dwelling;~~
 - ~~c) may not be considered in approving a redesignation or rezoning of forest lands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and~~
 - ~~d) may not be smaller than 25 acres unless the purpose of the land division is:
 - ~~i) to facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or~~
 - ~~ii) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of a least 2,000 acres of open space or park property.~~~~~~

10. **Action on a final plat is not a land use decision:** HB 3025 amends 197.015, and further refines the statutory provision that approval or denial of a final plat is not a land use decision. The new refinements add language to clarify that a “determination of conformance with the preliminary approval” is also not a land use decision or limited land use decision (and therefore, not appealable). The LU&DO needs to be amended to incorporate the new language. ♦ ♦ **Effect: clarification**

A. REVISE SECTION 4.200.8., STANDARDS FOR FINAL SUBDIVISION PLAT APPROVAL, BY AMENDING ITEM d., AS FOLLOWS:

- d. The granting of approval, ~~or withholding approval,~~ or a determination of conformance with the preliminary approval of a final subdivision plat is

not a land use decision or a limited land use decision, as defined in ORS 197.015.

B. REVISE SECTION 4.250.2., APPROVAL OF FINAL PARTITION PLAT, BY AMENDING ITEM h., AS FOLLOWS:

- h. The granting of approval, or withholding approval, or a determination of conformance with the preliminary approval of a final partition plat is not a land use decision or a limited land use decision, as defined in ORS 197.015.

LOCAL AMENDMENTS NECESSARY TO IMPROVE THE USE AND EFFECTIVENESS OF THE LU&DO

- 11. **Auto Dismantlers:** During the 2006 amendment cycle, a clarification was suggested that would exclude the storage of idled farm implements that may be used periodically but not continuously from the definition. To clarify the type of farm equipment included in the definition, it is appropriate to revise Chapter 1.

◆ ◆ **Effect: Clarification**

REVISE SECTION 1.090 (DEFINITIONS) AS FOLLOWS:

AUTOMOBILE WRECKING YARD: Any area of land used for the storage, wrecking, dismantling for parts or sale of five or more inoperable motor vehicles, trailers or farm equipment, or parts thereof, where such vehicles, trailers, equipment or parts are stored in the open and are not being actively restored to operating condition, and includes any land used for the commercial salvaging of any other goods, articles or merchandise. This definition excludes the storage of idle farm implements necessary for ongoing agricultural operations.

- 12. **Termination of Applications Upon Withdrawal:** Applications receiving a withdrawal request require a mechanism to terminate the corresponding file. A provision in Chapter 2 of the ordinance is therefore necessary to document the termination of applications. ◆ ◆ **Effect: Clarification**

ADD NEW SUBSECTION UNDER 2.040 (WHO MAY APPLY) TO READ AS FOLLOWS:

- 4. If an applicant submits a letter of withdrawal of an application, the application shall be terminated, the application withdrawn and the file closed without a decision with no opportunity for refund of the application fee.

- 13. **Sign Standards in Specialized and Limited Commercial and Industrial Zones:** These zones are not highway oriented zones, are rural, are limited to environmentally sensitive areas and do not clarify sign standards. They are especially designed for remote, rural commercial, industrial or water dependant industry. The intent of county

zoning provisions is clarified by this change. This amendment to the MC, CRC, WOCR, ME and MRI zones which specifies the size of new signs. This amendment also maintains conformance state siting standards set forth in ORS and OAR provisions. ♦ ♦ **Effect: Clarification**

ADD NEW LANGUAGE TO THE MC ZONE UNDER 3.19F.250.5 (PROPERTY DEVELOPMENT STANDARDS) TO READ AS FOLLOWS:

5. ~~Signs: No standard established~~

5. Signs: The total sign area of all signs on the property shall be limited to ninety-six square feet and shall be in conformance with state siting standards set forth in Oregon Revised Statutes and Oregon Administrative Rules.

ADD NEW LANGUAGE TO THE CRC ZONE UNDER 3.19B.200.5(c) (PROPERTY DEVELOPMENT STANDARDS) TO READ AS FOLLOWS:

5. Signs:

- a. Signs for uses other than on-site commercial activity shall be limited to a total area of 50 sq. ft.
- b. Signs may be illuminated but may not be of the flashing or moving type.
- c. The total sign area of all signs on the property shall be limited to ninety-six square feet.
- d. Signs shall be in conformance with state siting standards set forth in Oregon Revised Statutes and Oregon Administrative Rules.

ADD NEW LANGUAGE TO THE WOCR ZONE UNDER 3.19E.250.6(c) (PROPERTY DEVELOPMENT STANDARDS) TO READ AS FOLLOWS:

6. Signs:

- a. Moving or flashing signs are prohibited.
- b. No sign shall project above the height of of the tallest structure on the property.
- c. Signs for uses other than on-site industrial activity shall be limited to a total area of fifty square feet.
- d. Signs shall be in conformance with state siting standards set forth in Oregon Revised Statutes and Oregon Administrative Rules.

ADD NEW LANGUAGE TO THE ME ZONE UNDER 3.23B.200.5(c) & (d) (PROPERTY DEVELOPMENT STANDARDS) TO READ AS FOLLOWS:

5. Signs:

- a. Signs shall not extend over a public right-of-way or project beyond the property line.
- b. Signs may be illuminated but may not be of the flashing or moving type.
- c. The total sign area of all signs on the property shall be limited to ninety-six square feet.
- d. Signs shall be in conformance with state siting standards set forth in Oregon Revised Statutes and Oregon Administrative Rules.

ADD NEW LANGUAGE TO THE MRI ZONE UNDER 3.23C.250.4(c) & (d) (PROPERTY DEVELOPMENT STANDARDS) TO READ AS FOLLOWS:

4. Signs:

- a. Signs shall not extend over a public right-of-way or project beyond the property line.
- b. Signs may be illuminated but may not be of the flashing or moving type.
- c. The total sign area of all signs on the property shall be limited to ninety-six square feet.
- d. Signs shall be in conformance with state siting standards set forth in Oregon Revised Statutes and Oregon Administrative Rules.

- 14. Consistency in Sign Standards:** As a result of an Oregon Supreme Court decision limiting the ability of ODOT to regulate freeway-oriented billboards, 42 new billboards have been approved in the Commercial and Industrial zones throughout Douglas County. Application of the ordinance in accordance with siting standards set forth in the ORS and OARs for outdoor advertising along state facilities requires that language be included permitting outdoor advertising in the General Commercial, Urban Industrial and Rural Community Industrial zones. ♦ ♦ **Effect: Clarification**

ADD NEW LANGUAGE TO THE C-3 ZONE UNDER 3.18.050 (PERMITTED USES) TO READ AS FOLLOWS AND RENUMBER REMAINDER:

SECTION 3.18.050 Permitted Uses

In the C-3 zone, the following uses and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this ordinance.

13. Outdoor advertising in conformance with state siting standards set forth in Oregon Revised Statutes and Oregon Administrative Rules.

ADD NEW LANGUAGE TO THE M-1 ZONE UNDER 3.20.050 (PERMITTED USES) TO READ AS FOLLOWS AND RENUMBER REMAINDER:

SECTION 3.20.050 Permitted Uses

In the M-1 zone, the following uses and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this ordinance:

12. Outdoor Advertising in conformance with state siting standards set forth in Oregon Revised Statutes and Oregon Administrative Rules.

ADD NEW LANGUAGE TO THE MRC ZONE UNDER 3.23A.150.5(C) (PROPERTY DEVELOPMENT STANDARDS) TO READ AS FOLLOWS:

5. **Signs:**

- a. Signs shall not extend over a public right-of-way or project beyond the property line.
- b. Signs may be illuminated but may not be of the flashing or moving type.
- c. Signs shall be in conformance with state siting standards set forth in Oregon Revised Statutes and Oregon Administrative Rules.

15. **Sanitary Sewer Easements:** Section 4.100.10 provides for “a ten foot easement provision for storm drains.” This amendment includes easements for on-site sewage systems with the current 10 foot width for storm drains would correspond with OAR 340-071-220, Table I. ♦ ♦ **Effect: Clarification**

CHANGE LANGUAGE UNDER 4.100.10 (UTILITY EASEMENTS) TO READ AS FOLLOWS:

10. **Utility Easements**

Where alleys are not provided, utility easements of not less than six (6) feet in width shall be provided for necessary utility lines including poles, wires, conduits, sanitary sewers, gas, water, and heat lines, and not less than ten (10) feet for storm drains and on site sewage systems. Easements of the same or greater widths may be required along lot lines or across lots or parcels where necessary for the extension of utility lines, waterways and walkways, and to

provide necessary drainage ways or channels.

16. **Drainage Assessment:** Section 4.400 provides for “on-site grading and construction or installation of drainage facilities necessary for the purpose of proper drainage of the subdivision or partition.” Further language to clarify the administration of this provision related to drainage facilities is necessary.

◆ ◆ **Effect: Clarification**

ADD LANGUAGE UNDER 4.400 (IMPROVEMENTS) TO READ AS FOLLOWS:

SECTION 4.400 Improvements

The improvement standards contained in §4.400, 4.410 and 4.420 shall apply to all subdivisions in Douglas County, except as provided in §4.430.

1. Improvement Requirements

The following improvements shall be installed at the expense of the subdivider or partitioner:

[no change to a. thru c.]

- d. The applicant shall undertake on-site grading and construction or installation of drainage facilities necessary for the purpose of proper drainage of the subdivision or partition. In addition, for subdivisions and land partitions within a UGB or UUA the applicant shall
- (1) Provide on slopes exceeding a 12% gradient, a grading/drainage control plan prepared by an Oregon Licensed Professional Engineer to include information concerning slope gradient, on-site grading and cut/fill slopes, the elevations of building pads, conveyances and collection points and shall prescribe appropriate erosion and sediment control measures, and
 - (2) Provide certification from an Oregon Licensed Professional Engineer that all improvements required by the grading/drainage control plan have been completed and installed, or
 - (3) Provide certification from an Oregon Licensed Professional Engineer that any proposed development will have no adverse impact on the drainage patterns of the area and/or that slopes do not exceed 12% as an alternative to the grading/drainage control plan requirement.
 - (4) Subdivisions and partitions occurring outside of a recognized urban growth boundary shall not be subject to the forgoing provisions governing drainage.

[no change to e. and f.]

LUDO Amendments Fall 2007.wpd/bw



PLANNING DEPARTMENT

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December 3, 2007

TO: Board of Commissioners

FROM: Keith L. Cubic, Planning Director *Keith*

RE: Legislative Amendments to Land Use and Development Ordinance (LU&DO)

In final proofing the second draft (green booklet), I identified one word that needs correction. It is minor but important.

Page 20 (last page), number 16, last sub-point (4) in the second line replace **boundary** with area.

I recommend this change be included in final action on the Legislative Amendments to the LU&DO.

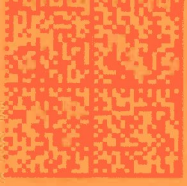
cc: Mark Bernard, Planner
Paul Meyer, County Counsel

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