



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/21/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: Douglas County Plan Amendment
DLCD File Number 004-09

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: Monday, January 04, 2010

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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Cheryl Goodhue, Douglas County
Gloria Gardiner, DLCD Urban Planning Specialist

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Notice of Adoption

In person electronic mailed

DEPT OF

DEC 14 2009

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

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

Jurisdiction: **Douglas County**

Local file number: **N/A**

Date of Adoption: **12/09/09**

Date Mailed: **12/11/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **YES** Date: **10/01/09**

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".

Land Use and Development Ordinance (LUDO) Amendments (Green booklet, "BOARD DRAFT" dated 12/09/09), including: an exemption for surface mining (SB 599); a clarification on LUCS authorization (HB 2230); changes to specific EFU uses (schools, golf courses, greyhound kenneling and DEQ-ordered solid waste disposal sites, (HB 3099)); and, a consultation requirement for linear utility facilities in high value farm land (HB 3153), resulting from law passed by the 2009 Legislature; a footnote clarifying nonfarm division and dwelling requirements resulting from a LUBA ruling; amendments to LUDO Article 30, Floodplain Overlay, resulting from FEMA requirements; and, minor amendments affecting the review process for various land use actions.

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

1) The new restrictions affecting nonfarm divisions and dwellings resulting from a recent LUBA ruling (Page 6 of both the "SECOND DRAFT" and the "BOARD DRAFT") have been removed from the Code language and replaced with a footnote clarifying the LUBA ruling.

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts: **N/A**

Local Contact: **Cheryl Goodhue**
Address: **Room 106, Justice Bldg, Courthouse**
City: **Roseburg** Zip: **97470-**

Phone: **(541) 440-4289** Extension:
Fax Number: **541-440-6266**
E-mail Address: **cagoodhu@co.douglas.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 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, or by emailing **larry.french@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 **larry.french@state.or.us** - **Attention: Plan Amendment Specialist.**

Updated March 17, 2009

DEC - 9 2009

**BEFORE THE BOARD OF COMMISSIONERS
OF DOUGLAS COUNTY, OREGON**

BARBARA E. NIELSEN, COUNTY CLERK

AN ORDINANCE ADOPTING AMENDMENTS)
TO THE DOUGLAS COUNTY LAND USE)
AND DEVELOPMENT ORDINANCE)

ORDINANCE NO. 2009 - 12 - 03

RECITALS

- A. Amendments to the Douglas County Land Use and Development Ordinance are needed in order to address new law passed by the 2009 Legislature, clarify a LUBA ruling, codify new FEMA requirements, add implementing provisions for Measure 49, and clarify the use and application of various land use review procedures. Appropriate legal notices have been completed.
- B. On November 19, 2009, the Douglas County Planning Commission held a Legislative hearing and recommended that the attached amendments be adopted by the Board of Commissioners.

THE DOUGLAS COUNTY BOARD OF COMMISSIONERS ORDAIN AS FOLLOWS:

SECTION ONE: The amendments contained in the green attachment titled "Land Use & Development Ordinance Amendments," "Board Draft," dated December 9, 2009, are ADOPTED and by reference made part of this Ordinance.

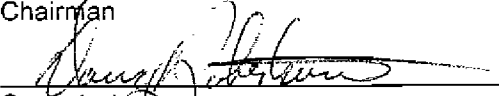
SECTION TWO: The amendments are necessary and appropriate and shall become effective on January 8, 2010.

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 9th day of December, 2009.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, OREGON


Chairman


Commissioner


Commissioner

**LAND USE
&
DEVELOPMENT ORDINANCE
AMENDMENTS**

BOARD DRAFT

December 9, 2009

Planning Commission
November 19, 2009

Board of Commissioners
December 9, 2009

Land Use & Development Ordinance Amendments

BOARD DRAFT - December 9, 2009

AMENDMENTS RESULTING FROM LAW PASSED BY THE 2009 OREGON STATE LEGISLATURE

1. **Exemption for Surface Mining: SB 599** added an exemption for excavation or reprocessing of aggregate material, or grading operations, within the public right-of-way. ♦ ♦ **Effect: Deregulation**

ADD TO DEFINITION OF "ROAD", §1.090 (DEFINITIONS) (P. 1-29)

ROAD: The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that Provides travel between places by means of vehicles. "Road" includes but is not limited to:

[no change to: a., b. or c.]

- d. Excavations or reprocessing of aggregate material, or grading operations, within the public right-of-way reasonably necessary for the construction, reconstruction or maintenance of a public highway.

2. **A LUCS is not a Land Use Decision: HB 2230** clarifies that local government authorization of a LUCS with a decision that the use: i) has already been authorized; ii) is permitted; or, iii) requires review, *is not* making a land use decision. ♦ ♦ **Effect: Clarification**

ADD AS AFFIRMATIVE STATEMENT TO THE END OF THE DEFINITION OF "LAND USE COMPATIBILITY STATEMENT", §1.090 (DEFINITIONS) (P. 1-18)

LAND USE COMPATIBILITY STATEMENT (LUCS): State agencies in Oregon are required to consider the Statewide Planning Goals and Acknowledged Comprehensive Plans prior to approval of State permits. A LUCS is a document issued by a State agency, where. . .An objector may appeal the Director's decision for review by the Planning commission. Local government authorization of a LUCS advising a state agency that a use: has already been authorized; is permitted; or, requires review, does not constitute a land use decision.

3. **Changes in EFU Uses: HB 3099** adds a high value prohibition to golf courses; moves schools from a permitted to a conditionally permitted use, removes the raising of greyhounds from farm use and eliminates sites for the disposal of solid waste ordered by the DEQ from the list of permitted uses. The Bill also provides for expansion of schools allowed prior to the Bill through the CUP process and subject to standards. Changes effected by this Bill are exempt from Measure 56 notice.
◆ ◆ **Effect: Regulation**

* **CHANGES TO THE DEFINITION OF FARM USE RESULTING FROM HB 3099:**

FARM USE: The current employment of land for the primary purpose of obtaining a profit in money by. . . (f) except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.283(1)(~~+~~) and the processing of farm crops into biofuel as commercial activities. . . (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, (†) (k) 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.

* **CHANGES TO THE FG ZONE RESULTING FROM HB 3099:**

STRIKE SITES FOR DISPOSAL OF SOLID WASTE FROM PERMITTED USES IN THE FG ZONE, §3.3.050, (P. 3-24)

SECTION 3.3.050 Permitted Uses

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

[no change to: 1. - 4.]

5. ~~Sites for the disposal of solid waste ordered to be established by the Department of Environmental Quality, and the facilities necessary for their operation.~~

SECTION 3.3.075 Uses Permitted with Standards

CHANGE ORS CITATION FOR RELATIVE DWELLINGS RESULTING FROM CHANGES TO ORS 215.283, (P. 3-27)

3. "Relative Dwelling" – A second single-family dwelling on real property used for farm use. . .

[no change to: a. or c.]

- b. Except as provided in ORS 215.283(1)(e), establishment of the second dwelling may not be used for future justification of land division; and

SECTION 3.3.075 Uses Permitted with Standards

REMOVE PUBLIC AND PRIVATE SCHOOLS TO CHANGE TO A CONDITIONALLY PERMITTED USE, (P. 3-27)

- 6. ~~Public or private schools, subject to §2.065.2, including all buildings essential to the operation of a school provided that they are not within 3 miles of an urban growth boundary unless an exception is approved pursuant to ORS 497.732 and OAR 660, Division 4. Existing school facilities may be maintained, enhanced or expanded on the same tract without an exception; new facilities are not allowed on high value farmland.~~

SECTION 3.3.100 Buildings and Uses Permitted Conditionally

ADD PROHIBITION OF GOLF COURSES ON HIGH VALUE FARMLAND (P. 3-30)

- 6. Golf courses as defined in OAR 660 Division 33 – **on land determined not to be high-value farmland, as defined in ORS 195.300.**

SECTION 3.3.100 Buildings and Uses Permitted Conditionally

ADD PUBLIC OR PRIVATE SCHOOLS PRIMARILY FOR RESIDENTS OF THE RURAL AREA IN WHICH THE SCHOOL IS LOCATED, AS A CONDITIONALLY PERMITTED USE, A(P. 3-32)

- 20. **Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located, and provided they are consistent with the siting standards of OAR 660 Division 33. New facilities are not allowed on high-value farmland.**
- 21. **A school formerly permitted under ORS 215.283 may be expanded, subject to the requirements of Article 39, if:**
 - a. **The use was established on or before January 1, 2009; and**
 - b. **The expansion occurs on:**
 - (1) **The tax lot on which the use was established on or before January 1, 2009; or**
 - (2) **A tax lot that is contiguous to the tax lot described in (1) above and that was owned by the applicant on January 1, 2009.**

*** CHANGES TO THE FC ZONE RESULTING FROM HB 3099:**

STRIKE SITES FOR DISPOSAL OF SOLID WASTE FROM PERMITTED USES IN THE FC ZONE, §3.4.050, (P. 3-39)

SECTION 3.4.050 Permitted Uses

[no change to: 1. - 4.]

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

5. ~~Sites for the disposal of solid waste ordered to be established by the Department of Environmental Quality, and the facilities necessary for their operation.~~

SECTION 3.4.075 Uses Permitted with Standards

CHANGE ORS CITATION FOR RELATIVE DWELLINGS RESULTING FROM CHANGES TO ORS 215.283, (P. 3-42)

3. "Relative Dwelling" – A second single-family dwelling on real property used for farm use. . .

[no change to: a. or c.]

- b. Except as provided in ORS 215.283(1)(e), establishment of the second dwelling may not be used for future justification of land division; and

SECTION 3.4.075 Uses Permitted with Standards

REMOVE PUBLIC AND PRIVATE SCHOOLS TO CHANGE TO A CONDITIONALLY PERMITTED USE, (P. 3-42)

6. ~~Public or private schools, subject to §2.065.2, including all buildings essential to the operation of a school provided that they are not within 3 miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4. Existing school facilities may be maintained, enhanced or expanded on the same tract without an exception; new facilities are not allowed on high value farmland.~~

SECTION 3.4.100 Buildings and Uses Permitted Conditionally

ADD PROHIBITION OF GOLF COURSES ON HIGH VALUE FARMLAND (P. 3-45)

6. Golf courses as defined in OAR 660 Division 33 – on land determined not to be high-value farmland, as defined in ORS 195.300.

SECTION 3.4.100 Buildings and Uses Permitted Conditionally

ADD PUBLIC OR PRIVATE SCHOOLS, PRIMARILY FOR RESIDENTS OF THE RURAL AREA IN WHICH THE SCHOOL IS LOCATED, AS A CONDITIONALLY PERMITTED USE, (P. 3-47)

20. Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located, and provided they are consistent with the siting standards of OAR 660 Division 33. New facilities are not allowed on high-value farmland.

21. A school formerly permitted under ORS 215.283 may be expanded, subject to the requirements of Article 39, if:

a. The use was established on or before January 1, 2009; and

b. The expansion occurs on:

(1) The tax lot on which the use was established on or before January 1, 2009; or

(2) A tax lot that is contiguous to the tax lot described in (1) above and that was owned by the applicant on January 1, 2009.

- 4. Utility Facilities in High Value - Consultation: *HB 3153* adds a requirement for a linear utility provider to consult with the record owner of any high value farm land in the route for the purpose of locating the line to minimize the impact on farming on high value farm lands. ♦ ♦ *Effect: Regulation***

ADD TO STANDARDS FOR UTILITY FACILITIES IN THE FG AND FC ZONES (PP.3-35 & 3-50)

SECTION 3.3.170 Standards for Authorization of Utility Facility Necessary for Public Service

6. Where linear utility facilities (which transfer a utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users), are proposed to pass through high value farmland, the utility provider shall provide the Approving Authority with documentation of consultation notice to record owners of high value farmland, as provided in ORS 215.275, prior to final approval of the utility facility.

SECTION 3.4.170 Standards for Authorization of Utility Facility Necessary for Public Service

6. Where linear utility facilities (which transfer a utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users), are proposed to pass through high value farmland, the utility provider shall provide the Approving Authority with documentation of consultation notice to record owners of high value farmland, as provided in ORS 215.275, prior to final approval of the utility facility.

AMENDMENT RESULTING FROM LUBA RULING

1. **Clarification of Restrictions for Nonfarm Dwellings & Divisions:** In conjunction with the Umpqua Pacific Resources request for a Nonfarm Dwelling on a .3 acre portion of a 3.00 acre parcel, LUBA issued a ruling that the water and on-site sewage systems that serve a nonfarm dwelling are part of the dwelling and must be located in the generally unsuitable portion of the property, along with the dwelling itself. A footnote is being added to clarify the application of this requirement in Douglas County, and to provide information for defensible and successful client applications. ♦ ♦ **Effect: Clarification**

ADD FOOTNOTE TO ARTICLE 43, NONRESOURCE DWELLINGS, §3.43.100.1.b, "BUILDING PERMITS," TO CLARIFY WATER AND ON-SITE SEWAGE SYSTEM RESTRICTIONS, (P. 3-266)

SECTION 3.43.100 Building Permits

1. b. The dwelling will be situated upon a lot or parcel, or portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.²

ADD THE FOLLOWING FOOTNOTE:

- ² LUBA ruled, in a 2008 Douglas County nonresource dwelling contested case, that the water system and the septic system that serve the nonresource dwelling must be located entirely on the generally unsuitable portion of the property. Until LUBA's ruling is modified or reversed in a subsequent decision or a higher level court ruling, or there is clarifying legislation or administrative rule change, nonresource dwellings under this decision must include both on-site water and sewage systems.

AMENDMENTS TO ARTICLE 30, FLOODPLAIN OVERLAY RESULTING FROM FEMA REQUIREMENTS

1. **New Definition:** FEMA requires our Ordinance to include a definition of crawl spaces.

SECTION 3.30.200 Definitions

ADD DEFINITION OF CRAWL SPACE TO ARTICLE 30 DEFINITIONS (P. 3-182)

BELOW-GRADE CRAWLSPACE: An enclosed area below the base flood elevation (BFE), and is not a basement. The crawl space must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of flood waters. The bottom of each flood vent opening can not be more than one (1) foot above the lowest adjacent exterior grade. Portions of the building below the BFE must be constructed with materials resistant to flood damage, including foundation walls, joists, insulation, or other materials that extend below the BFE. Building utility systems within the crawlspace must be elevated above BFE or be flood proof. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade, and must not exceed four (4) feet in height at any point.

2. **New Flood Insurance Study Data**

SECTION 3.30.220 Basis for Establishing Areas of Flood Hazard

REVISE TO REFLECT UPDATED FLOOD STUDY, (P. 3-186)

Special flood hazard areas and floodways are identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Douglas County, Oregon **Unincorporated and Incorporated Areas - Volume 1 and 2**", ~~dated March 4, 1986 and September 30, 1996,~~ **dated February 17, 2010.** This publication is used in conjunction with **historic floodplain data found in the 1986 and 1996 Flood Insurance Study, Flood Insurance Rate Maps, and Flood Hazard Boundary Maps and in the** series of orthophotos prepared by Spencer B. Gross and David C. Smith.

3. **Addition of Global Sea Level Data Reference**

SECTION 3.30.270 Required Permits

[no change to 1.]

- a. Elevation in relation to mean sea level **or NAVD 88, whichever is applicable** , of the lowest floor (including basement) of all structures;
- b. Elevation in relation to mean sea level **or NAVD 88, whichever is applicable** , to which any structure has been floodproofed;

[no change to c. or d.]

- e. Plot plan drawn to scale showing the nature, location and dimensions and elevation referenced to mean sea level **or NAVD 88, whichever is applicable** , of the area in question. . .

[no change to f.]

4. FEMA-required Clarification on One -Foot-Above Standard

SECTION 3.30.455 Residential Construction

ADD "MINIMUM OF" ONE FOOT ABOVE CLARIFICATION , (P. 3-194)

1. New construction and substantial improvements of any residential structure shall have the lowest floor height, including basement, elevated to "a minimum of" one foot "(1)" above "the" base flood elevation.

SECTION 3.30.460 Mobile Home Standards

ADD "MINIMUM OF" ONE FOOT ABOVE CLARIFICATION TO 2.a AND 2.d.(1) (P. 3-194)

- 2.a. Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be "a minimum of" 18 inches above the base flood elevation;
- 2.d. Manufactured homes in existing manufactured home parks may be placed and elevated so that either;
 - (1) The lowest floor of the manufactured home is one-foot a minimum of "18 inches" above the base flood elevation, or

LOCAL AMENDMENTS NECESSARY TO IMPROVE THE USE AND EFFECTIVENESS OF THE LUDO

1. **New Definition:** add definition of Recreational Mining to clarify that LUCS requests for gold mining and prospecting are permitted uses. ♦ ♦ **Effect: Clarification**

SECTION 1.090 Definitions

ADD TO DEFINITIONS, (P. 1-27)

RECREATIONAL MINING: mining that is locationally dependent and that is conducted in a manner that is consistent with a hobby or casual use, or using pans, sluices, rocker boxes, or other equipment as outlined in ORS 517.120(4). Recreational mining includes prospecting, using motorized or nonmotorized methods, for samples of gold, silver or other precious metals from among small quantities of aggregate or ore.

2. **Alteration of a Nonconforming Use:** add "verification" to application description at 2.060 and 3.37.500: ". . ." to address validation of nonconforming use through the 20-year fix process. ♦ ♦ **Effect: Clarification**

SECTION 2.060., Application

ADD TO APPLICATION DESCRIPTION, (P. 2-4)

- 1.k. Alteration, verification, repair or increase of a NonConforming Use (Article 37)

SECTION 3.37.500 Alterations or Repairs

ADD TO SECTION TITLE AND TEXT, (P. 3-247)

SECTION 3.37.500 Alterations or Repairs, or Verification

Alterations or repairs or verification of a nonconforming use may be permitted subject to the provisions of §3.37.560 and §2.060.1 of this ordinance. . .

3. **Major Amendments:** eliminate 2-year deadline for Major Amendment of an Administrative Action. ♦ ♦ **Effect: Deregulation**

SECTION 2.900, Amendments to Land Use Actions, except those approved under Chapter 4 of this Ordinance.

AMEND APPROVAL REQUIREMENTS (P. 2-29)

3. Approval of Major Amendments

Approval of a major amendment to an approved land use action ~~requested within two years of the date of decision (or, within the extension period for the decision if an extension has been authorized)~~ shall be an Administrative Action subject to the provisions of §2.060.1 of this ordinance.

4. **TR Zone:** add "forest uses" to cross-reference with definition of "forest use" in LUDO §1.090. ♦ ♦ **Effect: Clarification**

SECTION 3.2.050, Permitted Uses

ADD "FOREST USES" TO FOREST OPERATIONS AND FOREST PRACTICES, (P. 3-9)

1. Forest operations, forest uses, or forest practices including, but not limited to. . .
5. **Resource Road Improvements:** add OAR Division 660 requirements to CUP criteria. ♦ ♦ **Effect: Clarification**

SECTION 3.35.250, Resource Zone Road Improvements

ADD REFERENCE TO OAR REQUIREMENTS(P. 3-224)

2. Road improvement Conditionally Approved

The following uses may be conditionally approved within the resource zones : , subject to the applicable provisions of OAR 660.

6. **Dredge Material Disposal Sites:** re-language to eliminate land use review process for removal of Overlay. ♦ ♦ **Effect: Deregulation**

SECTION 3.35.700, Dredge Material Disposal/Mitigation Site Overlay (D/MO)

ELIMINATE PROCESS FOR REMOVAL OF DREDGE MATERIAL OVERLAY, (P. 3-2 28)

[no change to 1. or 2.]

3. Where the disposition of dredged material is designed to prepare a site for future accommodation of a more intense use, that use or conditional use, shall not be permitted until deposition in the area is complete, ~~and the~~ **The provisions of the** overlay designation for that portion of the site is **shall no longer apply** removed through the Zone Amendment Process. ~~The overlay shall be removed if, in addition to conformance with the criteria contained in §3.38.200, findings are made~~ **upon receipt of an engineer's certification verifying** that:

- (1) filling of the site has been completed; and
- (2) the site has been prepared to reasonably accommodate uses of the underlying zone.

7. **Conditional Approval of a Zone Change:** re-language to eliminate conditional zone change. ♦ ♦ **Effect: Deregulation**

SECTION 3.38.200 Conditional Approval of a Zone Change

AMEND SECTION TITLE AND NARRATIVE TO ELIMINATE CONDITIONAL ZONE CHANGES, (P. 3-254)

SECTION 3.38.200 Conditional Approval of **Development Review Following a Zone Change**

Reasonable conditions may be imposed on the development review process, and building permits, pursuant to ~~§2.120.3,~~ as are necessary to insure the compatibility of a zone change to surrounding uses, and as are necessary to fulfill the general and specific purposes of this ordinance ~~and the Comprehensive Plan~~ **by application of §3.35.300 or 3.35.500.** Such conditions may include but are not limited to the following:

8. **Private Road Certification:** eliminate the "existing private road" certification provision in 4.420.4.b. If a private road requires improvement, whether existing or not, it requires certification as outlined in 4.420.4.a. ♦ ♦ **Effect: Clarification**

REVISE 4.a., DELETE 4.b., (P. 4-63)

SECTION 4.420.4. Certification and Special Considerations

- a. The applicant shall retain a consultant engineer to inspect his **any** private road project **improvements required by the Approving Authority**. When

the project is improvements are completed, that ~~the~~ engineer shall certify to the County, in writing, that the ~~project has~~ improvements have been constructed in substantial conformance to the County's current improvement standards, unless a variance to road improvement standards is authorized pursuant to §4.450 or 4.475 of this Chapter.

~~b. In the event an existing road is to be used for access to a land division, it shall be inspected by a consultant engineer retained by the applicant and, if found adequate for the intent and purposes of the private road requirements, shall be approved.~~

9. Amendments to Chapter 10, Real Property Compensation, to Incorporate the Passage of Measure 49: Chapter 10 of the LUDO was originally written to address the passage of Measure 37 in November of 2004. The passage of Measure 49 on November 6, 2007, requires Chapter 10 to be revised to reflect the implementing provisions of Measure 49. ♦ ♦ **Effect: Regulation**

**REVISE CHAPTER 10 TO REPLACE IMPLEMENTING PROVISIONS FOR MEASURE 37 WITH THOSE OF MEASURE 49.*

SECTION 10.010 Purpose

UPDATE TO REFLECT THE PASSAGE OF MEASURE 49

This chapter shall be referred to as the "Real Property Compensation Ordinance" and is intended to implement Oregon Revised Statutes 195.300 - 336 Ballot Measure 49 (November 6, 2007). The provisions of this Chapter establish a prompt, open, thorough and consistent process that enables property owners to make a claim that just compensation be provided, or a waiver granted, for unfair burdens caused by land use regulations enacted after the date the current owner/claimant acquired the property. The provisions of this Chapter also provide an adequate and fair opportunity for property owners to present their claims to the County; preserves and protects limited public funds; and establishes a record of the County's decision capable of circuit court review.

**REVISE DEFINITIONS TO REFER TO ORS 195.300*

SECTION 10.020 Definitions

As used in this Chapter, the definitions of ORS 195.300 shall apply.

**ADD SECTION 10.025 TO ADDRESS DETERMINATION OF VESTED RIGHTS*

SECTION 10.025 Determination of Common Law Vested Right

A claimant who filed a claim under the provisions of Ballot Measure 37, and was issued a waiver before December 6, 2007, may complete and continue the use described in the waiver if: 1) the claimant's use of the property complies with the waiver, and 2) the claimant has provided sufficient demonstration to the Planning Director that claimant has a common law vested right (as of December 6, 2007) to proceed with the development authorized by the waiver. A vesting review, conducted by the Planning Director, is not a land use decision.

**DELETE SECTION 10.030, PROCEDURES FOR FILING CLAIMS UNDER MEASURE 37*

**ADD SECTION 10.035, PROCEDURES FOR FILING CLAIMS UNDER MEASURE 49*

SECTION 10.035 Claim Filing and Review Procedures for New Claims

All claims for just compensation or a waiver shall be subject to the provisions of this Section. All such claims are referred to as "new claims" and shall be reviewed as administrative actions under §2.060.1 of this Ordinance.

1. New claims may be filed under this Section if the claimant establishes the following:
 - a. The claimant is an owner of the property and all other owners of the property (if any) have consented in writing to the filing of the claim;
 - b. The claimant's desired use of the property is a residential use or a farming or forest practice;
 - c. The claimant's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and
 - d. The enactment of one or more land use regulations after January 1, 2007, other than exempt land use regulations, has reduced the fair market value of the property (as established in subsection 5.b).
2. Claims subject to the provisions of this Section must be filed within five years after the date the land use regulation was adopted by the County.
3. Relief may not be granted under §10.035 if the highest and best use of the property (as established by the appraisal required in subsection 5.a.7) at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.
4. If claimant can meet the requirements of §10.035.1 (as determined by the County), and the land use regulation was enacted by Douglas County (excluding those land use regulations required by state statute, goal or rule, and therefore subject to review by the state), then claimant shall initiate the claim filing process with the Planning Director. After review by the Planning Director (as provided in this Section), the County may either:
 - a. Compensate the claimant for the reduction in the fair market value of the property;
 - b. Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property; or

- c. Deny the Claim if the claimant does not meet the requirements of this Chapter.

The County can only waive land use regulations that are enacted by the County. If the land use regulation was enacted by the state, then the claimant will need to file a Measure 49 claim with the state. If claimant is authorized by the state to use the property without application of the state land use regulation, claimant may then proceed with the local development review process.

5. Required information for new claims filed with Douglas County

- a. A person seeking relief under this Section must be a present owner of the property that is the subject of the claim at the time the claim is filed. If the property for which the claim is filed has more than one owner, the claim must be signed by all the owners or the claim must include a signed statement of consent from each owner. Only one claim for each property may be filed for each land use regulation. In order to be determined complete, the claim shall be submitted in writing, include the appropriate fee, and shall include:
 - (1) Statements and evidence addressing §10.035.1;
 - (2) The name, address and telephone number of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each;
 - (3) The address (if any), tax lot number, and legal description of the real property that is the subject of the claim;
 - (4) Evidence of the acquisition date of the claimant, including:
 - (a) The instrument conveying the property to the claimant, and
 - (b) A report from a title company identifying:
 - i. the person in which title is vested;
 - ii. the claimant's acquisition date; and
 - iii. a description of exceptions and encumbrances to title that are of record (including any leases or covenants, conditions and restrictions);
 - (5) A citation to the current land use regulation that claimant believes is restricting the claimant's desired use of the real property and is the basis for the alleged reduction in the fair market value of the subject property (the citation must be adequate to allow the County to identify the specific land use regulation that is the basis for the claim);

- (6) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and
 - (7) An appraisal of the property that complies with subsection 5.b. below, and establishes a reduction of the fair market value of the property to address §10.035.1.d.
- b. Appraisal: The claimant shall provide an appraisal meeting the requirements of ORS 195.310 (2). The appraisal shall be prepared by a certified appraiser and must state the highest and best use of the property at the time the land use regulation was enacted. The appraisal shall calculate the reduction in fair market value as provided in ORS 195.310.
- c. Claims filed under this Section shall be accompanied by a County processing fee equal to that charged for an administrative variance.
- 6. Approval criteria: After administrative review, the Planning Director may take appropriate action consistent with §10.035.4, upon finding that claimant has provided sufficient information and evidence addressing the requirements of §10.035.5, and that the evidence provided substantiates that:
 - a. The land use regulation for which a claim is submitted was enacted or enforced by the County after the date of acquisition of the property by the claimant; and
 - b. The claimant's appraisal provides documentation that there has been a reduction in the fair market value of the property resulting from County enactment or enforcement of the land use regulation.
- 7. If the County waives the land use regulation, allowing the specific use of the property that the claimant desires to carry out, then the use authorized has the legal status of a lawful nonconforming use as provided in ORS 215.130. The claimant may carry out the use authorized by the County, with the exception that the County may waive only those land use regulations that originate with and are adopted and enforced by the County. When a use authorized by this Section is lawfully established, the use may be continued lawfully in the same manner as provided in ORS 215.130.
- 8. If the County elects to compensate the claimant for a valid claim, then the current land use regulation for which compensation has been paid will fully apply to the owner's property.
- 9. Exclusions:
 - a. If an owner submits an application for a Comprehensive Plan Amendment or a Zone Change, and the amendment or zone change is approved by the County or a city, the owner is not entitled to relief under the provisions of Chapter 10 of this Ordinance with respect to a land use regulation enacted before the date the Plan Amendment or Zone Change application was filed.

- b. If an owner files a petition to initiate annexation to a city, and the city approves the petition, the owner is not entitled to relief under the provisions of Chapter 10 of this Ordinance with respect to a land use regulation enacted before the date the petition was filed.
10. Exemptions: This Chapter 10 does not apply to those exempt land use regulations described in ORS 195.300 to 195.336, including ORS 195.305 (land use regulations restricting or prohibiting activities commonly and historically recognized as public nuisances under common law; restricting or prohibiting activities for the protection of public health and safety; to the extent the land use regulation is required to comply with federal law; or restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing) and ORS 195.308 (land use regulations established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.685, 561.687, 561.689, 561.691, 561.693, 561.695, 561.995, 570.005 to 570.600, 570.650, 570.700 to 570.710, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes).

**REVISE SECTION 10.040 TO ADDRESS REVIEW PROCESS FOR CLAIMS FILED UNDER §10.035*

SECTION 10.040 Review Process for New Claims filed under Section 10.035

Claims submitted under the provisions of Section 10.035 are subject to the following review process.

1. Completeness review:
 - a. A new claim is considered "filed" on the date it is received by the County. A claim is not complete simply because it has been filed. After a new claim is filed, the Planning Director shall have 60 days to review the claim and determine whether it contains the information, appraisal and fee required in §10.035. If the claim is complete, the reviewer shall sign the claim and indicate the date it is found to be complete. If the claim is incomplete, the County shall notify the claimant in writing of the information or fee that is missing within 60 days after receiving the claim and allow the claimant 90 days to submit, in writing, the missing information and/or fee. The claim shall be considered complete on the date the County receives the required fee and:
 - (1) The missing information;
 - (2) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or
 - (3) Written notice from the claimant that none of the missing information will be provided.

- b. If the County does not notify a claimant within 60 days after a new claim is filed, that information or the required appraisal and fee is missing, the claim shall be deemed complete on the date it was filed.
 - c. A new claim filed under Section 10.035, shall be deemed withdrawn if the County notified the claimant of an incomplete claim and the claimant does not respond in writing, as provided in 1.a. above, within 90 days after the date on the County notice.
 - d. The County shall issue a final determination for claims filed under §10.035, within 180 days after the date the claim was determined to be complete.
2. Notice: At least 30 days before the deadline for submission of written comments, the County shall provide notice of a claim filed under the provisions of §10.035 to:
- a. The claimant and all owners identified in the claim;
 - b. Those adjacent owners listed at §2.065.1.b;
 - c. The appropriate Planning Advisory Committee;
 - d. The State Department of Land Conservation and Development; and
 - e. The appropriate city, if the property is located within the UGB or within an adopted urban planning area of the city.
 - f. The appropriate Planning Advisory Committee whose boundaries include the site.
3. The notice required under §10.040.2 must describe the claim and advise:
- a. That a public hearing will not be held on the claim;
 - b. The final date for submission of written evidence and argument relating to the claim;
 - c. That judicial review (ORS 195.318) of the County's final determination on the claim, is limited to the written evidence and argument submitted to the County; and
 - d. That judicial review is available only for issues that are raised with sufficient specificity to afford the County an opportunity to respond.
4. Written evidence and argument in support of, or in opposition to, a claim filed under §10.035, shall be submitted to the County not later

than the deadline for submission of written comments as specified in the notice sent from the County. The record on the matter shall close on the deadline for submission of written comments. However, the claimant may request additional time to submit written evidence and argument in response to testimony or submittals in the record. The claimant's request for additional time must be made before the deadline for submission of written comments as specified in the required County notice.

**ADD SECTION 10.050 TO SPECIFY DIRECTOR'S ACTION ON CLAIMS FILED UNDER 10.035.*

SECTION 10.050 County Planning Director Action on New Claims filed under Section 10.035

1. Following the close of the record, the Planning Director shall make (subject to Board of Commissioner review) a final determination on claims filed under §10.035. The Director may:
 - a. Deny the claim;
 - b. Declare the claim valid and waive or modify the land use regulation(s) at issue, authorizing the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property; or
 - c. Declare the claim valid and recommend to the Board of Commissioners that the claimant be compensated for the reduction in the fair market value of the property.
2. The County shall mail a copy of the Planning Director's final determination to the claimant and to any person who submitted written evidence or argument before the close of the record.
3. The Planning Director shall cause the final determination, whether originating from the County or from DLCDC, to be recorded in the deed records of the Douglas County Clerk's Office.
4. If the Director's final determination affects property located entirely outside of a UGB, notice of the final determination shall also be sent to:
 - a. The Douglas County Assessor;
 - b. Any district or municipality that supplies water for domestic, municipal or irrigation uses and has a place of use or well located within one-half mile of the property; and
 - c. The state departments of Land Conservation and Development, Agriculture, Water Resources, and Forestry.

5. If the Planning Director's action is that a claim be denied or the land use regulation be waived or modified and the Board of Commissioners does not inform the Planning Director within 10 days of notice as provided in 10.050.2 that the Board disagrees, then the Planning Director's action shall become final.
6. Development authorization: If the Planning Director has issued a final determination approving the claim, authorizing a specific number of lots, parcels or dwellings – or if DLCD has issued a final order approving a specific number of lots, parcels or dwellings – and the provisions of Section 10.060 have been satisfied, the claimant may then seek local approvals or authorizations required by law for the subdivision or partition of the property or for the development of any dwelling.

**REVISE SECTION 10.060 TO ADDRESS BOARD REVIEW FOR CLAIMS FILED UNDER §10.035*

SECTION 10.060 Board Review of New Claims Filed Under Section 10.035

1. The Board may on its own motion passed within ten days of the notice given pursuant to Section 10.050.2 above, review the decision of the Planning Director. If the Board does not do so, then the Board shall be deemed to have ratified the Planning Director's decision.
2. Claims reviewed by the Board shall be reviewed in a public hearing.
3. For claims reviewed by the Board, the Board shall adopt a resolution with findings that support a determination that the claim is valid or invalid and shall direct that the claimant be compensated in an amount set forth in the resolution for the reduction in the fair market value of the property; or that the challenged land use regulation be modified or not be applied to the property (authorizing the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property); or deny an application as invalid.

**REVISE SECTION 10.070 TO REFLECT THAT BOARD HAS ESTABLISHED A FEE SCHEDULE*

SECTION 10.070 Fees

1. The Board has established fees applicable to County review of claims for real property compensation. Those fees may be amended from time to time.

[no change to 2.]

**ADD SECTION 10.080 TO ADDRESS SUPPLEMENTAL PROPERTY DEVELOPMENT STANDARDS FOR RESIDENTIAL DEVELOPMENT.*

SECTION 10.080 Supplemental Property Development Standards for Residential Development

Claims filed under the standards of Measure 37 (excepting those claims where a waiver has been issued and subsequent development is vested) are subject to review under the provisions of ORS 195.300 - 336. Claimants who are granted a waiver under the statute, may then initiate the County's development review process. Residential development is subject to the provisions of Section 11, ORS 195.305 Temporary Provisions relating to previously filed claims.

**REVISE SECTION 10.090 TO CLARIFY CLAIM FILING.*

SECTION 10.090 State Claims

Claims for compensation based solely upon laws administered by the state shall be filed with the State of Oregon.

**REVISE SECTION 10.100 TO CLARIFY INTERPRETATION PROVISIONS.*

SECTION 10.100 Interpretation

This ordinance shall be interpreted and applied consistently with the provisions of ORS 195.300-336.

10. Miscellaneous Clarifications and Scrivener Error Corrections

- Dredge Material Disposal and Mitigation Site (Article 35)**: specify Administrative process applies to 3.35.700.1.

SECTION 2.060., Application

CLARIFY ARTICLE 35 REFERENCE , (P. 2-4)

1.p(4) Dredge Material Disposal and Mitigation Site (~~Article 35~~ **§3.35.700.1.**)

- Architecturally Controlled Districts**: change to "Design Review Overlay" Districts.

SECTION 2.060., Application

REVISE APPLICATION DESCRIPTION, (P. 2-5)

2.f Development on property subject to overlay districts including:

- (9) ~~Architecturally Controlled~~ **Design Review Overlay** Districts (Article 35)

- **Director's Appeal Period** : change ten day appeal period artifact to twelve days.

SECTION 2.400., Appeal from Decision of the Director

CORRECT SCRIVENER ERROR, (P. 2-20)

3. The Planning Commission or Hearings Officer shall review the Administrative Action of the Director upon receipt of a Notice of Appeal. For the purpose of this section, an Appeal shall be filed with the Director no later than **ten twelve (12)** days following the date the decision was sent. . .

- **SECTION 3.30.460 Mobile Home Standards**

INSERT LINE SPACE BETWEEN 3.30.460.3. d. AND e., (P. 3-196)

- **Floodway District**: delete repetitive artifact.

SECTION 3.30.520 Floodway District

CORRECT SCRIVENER ERROR, (P. 3-197)

4. Any mobile homes placed, or additions thereto shall conform to standards of §3.30.460, 3.30.270 and 3.30.520.
- ~~3. Any mobile homes placed, or additions thereto shall conform to standards of §3.30.460, 3.30.270 and 3.30.520.~~

- **Major Collector Right of Way Width Standards**: delete reference to A and B and replace with an asterisk referring to Plan policy.

REVISE CHART, (P. 4-66)

~~A = 84'~~

~~B = 74'~~ REPLACE WITH: **74' - 84' ***

***Refer to Comprehensive Plan Urban Unincorporated Area policy.**

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