



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

04/22/2013

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 001-12A

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. This notice has been amended due to the error of the adoption notice 001-13 NOA. Appeal Procedures* This notice replaces the error notice.

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, May 08, 2013

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

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

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

Cc: Cheryl Goodhue, Douglas County
Jon Jinings, DLCD Community Services Specialist
Katherine Daniels, DLCD Farm/Forest Specialist
Josh LeBombard, DLCD Regional Representative

<paa> YA



PLANNING DEPARTMENT

Room 106 • Justice Building • Douglas County Courthouse
Roseburg, Oregon 97470

Agency Coordination • Administrative • Long Range • Support Services
(541) 440-4289 • (541) 440-6266 Fax


On-Site Services Community Services
(541) 440-6183 (541) 464-6443
(541) 464-6429 Fax

May 8, 2013



MEMORANDUM

TO: DLCD Plan Amendment Specialist

FROM: Cheryl Goodhue, Planning Manager 

RE: Douglas County Amendment; DLCD File Number 001-13

The DLCD Notice of Adopted Amendment (attached) for the above-referenced Legislative Amendment to the Douglas County Land Use & Development Ordinance (LUDO), states, in part, "*This amendment was **not [emphasis added]** submitted to DLCD for review prior to adoption...*"; this statement is incorrect.

Attached is a copy of the County's DLCD notice of proposed Legislative LUDO amendments (First Draft) with an affidavit of mailing dated October 29, 2012, forty-five days prior to the first evidentiary hearing on December 13, 2012. The notice of proposed amendment was sent in accordance with ORS 197.610(1) and OAR 660-018-0020. Also attached is e-mail correspondence from Katherine Daniels, DLDC Farm & Forest Lands Specialist, Cc'd to Josh LeBombard, DLCD Regional Representative, demonstrating their review of, and response to, all three drafts of the proposed amendments to the Template Dwelling standards, throughout the Legislative process.

Because of testimony received at the first evidentiary hearing held on December 13, 2012, including a DLCD response submitted to the Record at that hearing, the Template Dwelling amendment was continued to January 10 and again to the March 21, 2013 Planning Commission meeting. OAR 660-018-0020 (1)(d) provides, in part,

If a final hearing on adoption is continued or delayed, following proper procedures, the local government is not required to submit a new notice under OAR 660-018-0020.

The last DLCD e-mail correspondence (March 14, 2013) acknowledges e-mail receipt of the staff report and a Third Draft of the proposed Template Dwelling amendment that would go before the Planning Commission on March 21, 2013; no further response was received from DLCD. On March 21, the Planning Commission recommended approval of the Third Draft of the Template Dwelling amendment and on April 10, 2013, the Board of Commissioners adopted the amendment.

Notice of Adoption was sent to DLCD on April 17, 2013, in accordance with OAR 660-018-0040. The DLCD notice form asks if the adoption differs from the proposal and requires an explanation if the answer is yes. On the Template Dwelling Notice of Adoption, the County states,

Yes. The adopted amendment adds a standard to the requirements for authorization of a Template Dwelling, which provides for notification of permit authorization and opportunity for review by the Planning Commission.

The substantive change in the proposed amendment, i.e., the addition of a standard requiring the County to give notice of a Template Dwelling authorization, was a measure taken to address testimony received on the amendment, including that of DLCD. In a December 13, 2012 letter submitted to the Planning Commission Record at the first evidentiary hearing, Katherine Daniels concluded the criteria required to be used in making decisions on template dwellings involve discretion and could not be processed ministerially, as the County has been processing these dwellings since their inception in 1993. DLCD, upon acknowledging receipt of the staff report and Third Draft of the proposed amendment, which added a standard requiring County notice of Template Dwelling authorization, provided no further comment.

The County's response on the Notice of Adoption is consistent with OAR 660-018-0045, "Changes in Proposals," which states,

*If comprehensive plan or land use regulation amendments or new land use regulations that are adopted by a local government have been substantially amended, the local government must specify the changes that have been made in the notice to the director provided in OAR 660-028-0040. (i.e., the "Submittal of **Adopted [emphasis added]** Material.")*

DLCD's indication that Douglas County's Land Use Regulation amendments were not submitted to DLCD for review prior to adoption, or that DLCD was not adequately notified throughout the Legislative process including notice of adoption, is simply incorrect.

Cc: Jon Jinings, DLCD Community Services Specialist
Katherine Daniels, DLCD Farm & Forest Lands Specialist
Josh LeBombard, DLCD Regional Representative
Keith L. Cubic, Planning Director



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Theodore R. Kulongoski, Governor

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NOTICE OF ADOPTED AMENDMENT

04/22/2013

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 001-13

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, May 08, 2013

This amendment was not submitted to DLCD for review prior to adoption pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

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

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

Cc: Cheryl Goodhue, Douglas County
Jon Jinings, DLCD Community Services Specialist
Josh LeBombard, DLCD Regional Representative

<paa> N



2 DLCD

DEPT OF

APR 18 2013

Notice of Adoption

**LAND CONSERVATION
AND DEVELOPMENT**

This Form 2 must be mailed to DLCD within 20-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Douglas County**

Local file number: **N/A**

Date of Adoption: **4/10/2013**

Date Mailed: **4/17/2013**

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

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".

Amendments to the LUDO were adopted to clarify the provisions for authorization of a Template Dwelling building permit.

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

The adopted amendment adds a standard to the requirements for authorization of a Template Dwelling, which provides for notification of permit authorization and opportunity for review by the Planning Commission.

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...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD File No. 001-13 (19805) [17422]

DLCD file No. _____

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

N/A

Local Contact: Cheryl Goodhue, Planning Manager Phone: (541) 440-4289 Extension:
Address: Room 106 Justice Bldg Courthsc Fax Number: 541-440-6266
City: Roseburg Zip: 97470- E-mail Address: cagoodhu@co.douglas.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s), per ORS 197.615 and OAR Chapter 660, Division 18

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

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

9. **Need More Copies?** Please print forms on 8Y2 -1/2x11 green paper **only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

DOUGLAS COUNTY OREGON

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

AN ORDINANCE ADOPTING AMENDMENTS)
TO THE DOUGLAS COUNTY LAND USE &)
DEVELOPMENT ORDINANCE (LUDO)

ORDINANCE 2013-04-01

APR 15 2013

PATRICIA K HITT, COUNTY CLERK

RECITALS:

- A. Amendments to the Douglas County Land Use & Development Ordinance are needed in order to clarify the provisions for authorization of a Template Dwelling building permit and to effect a process change providing for notification of permit authorization and opportunity for review by the Planning Commission.
- B. This amendment to the LUDO provisions for authorization of a Template Dwelling building permit is a measure taken to avoid further litigation on a process issue and achieve the notice and opportunity objective raised in individual appeals of Template Dwelling approvals with maximum efficiency. The provision for notice as contained in this amendment is in accordance with LUDO requirements for notice of decision of a land use action.
- C. At their March 21, 2013 continued hearing in this matter, the Douglas County Planning Commission recommended that the amendments to Template Dwelling provisions of the LUDO, as contained in the attached "BOARD DRAFT" dated April 10, 2013, 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 "Amendments to the Douglas County Land Use & Development Ordinance (LUDO), BOARD DRAFT" dated April 10, 2013 are adopted.
- SECTION TWO: The amendments are necessary and appropriate and shall become effective on May 10, 2013.
- 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 10 day of April, 2013.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, OREGON

Ab Sen
Chair
Joseph Lamm
Commissioner
[Signature]
Commissioner

Douglas County Official Records
Patricia K. Hitt, County Clerk
Commissioners' Journals

2013-0352

04/15/2013

SUMMARY
LAND USE & DEVELOPMENT ORDINANCE AMENDMENT
TEMPLATE DWELLING PROVISIONS
BOARD DRAFT, APRIL 10, 2013

CONTINUED FROM THE JANUARY 9, 2013 BOARD OF COMMISSIONERS
MEETING TO THE APRIL 10, 2013 MEETING

Subject	Summary	Effect
1. Provisions for Forest Template Dwellings	This amendment clarifies the standards required for authorization of a forest template dwelling building permit, as provided for in the FF and AW zones, and adds a standard providing for notification of permit authorization.	Clarification & Process Change

Amendments to the

**DOUGLAS COUNTY LAND USE &
DEVELOPMENT ORDINANCE
(LUDO)**

BOARD DRAFT
April 10, 2013

Board of Commissioners
January 9, 2013, **Template Dwelling Provisions**
continued to April 10, 2013

TABLE OF CONTENTS

1 Forest Template Dwelling Provisions

An amendment clarifying the standards required for authorization of a forest template dwelling building permit as provided for in the FF and AW zones, and adding a standard for notice of permit authorization. **(This item was continued from the January 9, 2013 Board of Commissioners meeting to the April 10, 2013 meeting.)**

1. Forest Template Dwelling Provisions

Recently approved Template Dwellings, processed ministerially since their inception in 1993 (HB 3661) as "uses permitted with standards," have been individually appealed to the Land Use Board of Appeals based on the assertion that the Template Dwelling approval requires notice and an opportunity for a hearing, as its standards for approval require interpretation and the exercise of policy or legal judgement.

In reviewing Template Dwellings, some of the standards outlined in the provisions of ORS 215.750 can be argued to require some discretion. Therefore, under this amendment, the Planning Department will issue a decision in accordance with provisions of the LUDO, and shall mail a twelve-day notice of the decision to property owners within 750 feet of the property for which the Template Dwelling permit is authorized. An objector may appeal the decision for review by the Planning Commission.

The addition of a standard requiring notice of a Template Dwelling permit authorization increases regulation *in terms of process only*. Notification of permit authorization is a measure taken to avoid further litigation and make the system work for citizens. This structure achieves the notice and opportunity objective raised in the individual appeals with maximum efficiency and minimum delay. It is designed to provide citizens with a positive outcome in the shortest time frame possible by avoiding individual appeal of an approval based on a procedural issue. Many counties provide minimal notice, i.e., notice of decision only. It is in the best interest of the citizens of this county to effect a change in process to protect their individual outcomes. This amendment is needed to clarify template dwelling permit standards and to provide a standard for notice of template dwelling permit authorization.+ ♦
Effect: Clarification and Process Change

PROPOSED AMENDMENT TO THE LUDO

ACTION: CLARIFY PROVISIONS TO WHICH THE TEMPLATE DWELLING IS SUBJECT AT **FF**, **§3.5.075.11** (P. 3-53) AND A TAW, **§3.6.075.2** (P. 3-64); CLARIFY TEMPLATE DWELLING STANDARDS AND ADD NOTICE STANDARD AT **ARTICLE 42, §3.42.100.8** (P. 3-255).

NOTE: proposed additions are **bolded and underlined**; deletions are **~~struckout~~**.

SECTION 3.5.075 Uses Permitted with Standards, FF

11. "Template" Dwelling, subject to the provisions of Article 42 and the **building permit** siting standards in §3.5.160 and §3.5.170 **of the FF zone.**

SECTION 3.6.075 Uses Permitted with Standards, AW

2. "Template" Dwelling, subject to the provisions of Article 42 and the **building permit** siting standards in §3.5.160 and §3.5.170 **of the AW zone.**

ARTICLE 42, Approval of Template Dwellings in the FF and AW Zone

SECTION 3.42.000 Purpose

The purpose of this article is to ~~set forth the standards of ORS 215.750 to authorize issuance of a building permit~~ **establish approval criteria for review and action on requests** for a Template Dwellings (so called because a 160 acre template is used on a map to ~~depict test~~ parcel eligibility). Requests for building permits under this Article shall be made to the Director pursuant to ~~§2.060.2 of this ordinance~~.

SECTION 3.42.100 Building Permits

Building permits proposed under this Article, for lands zoned FF or AW, shall conform to the following ~~standards and notice requirement~~ criteria and

[no change to 2., 3. or 4.]

5. The proposed Template Dwelling must comply with other requirements of the ~~Comprehensive Plan* and Land Use and Development Ordinance, which carries out the Comprehensive Plan.~~

[no. change to 6. or 7.]

8. **If the lot or parcel is greater than 10 acres, the property owner must submit a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.620 to 527.770 have been met.**
9. **A 12-day notice of a decision authorizing issuance of a building permit for a Template Dwelling shall be mailed to owners of property within 750 feet of the subject property for which the dwelling is authorized. The decision shall become final upon the expiration of the 12 days from the date the decision was mailed, unless an appeal for public hearing review is received within the 12-day period.**

NOTE: the statute does *not* state that a template dwelling must comply with other requirements of the Comprehensive Plan and Land Use and Development Ordinance, rather, it provides the disclaimer that a template dwelling is not allowed *if* it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations. Douglas County's Comprehensive Plan and LUDO are acknowledged. The standards of ORS/OAR for template dwellings are codified in LUDO and could not be codified if inconsistent with, or prohibited by, the County's acknowledged Comprehensive Plan.

Cheryl Goodhue

From: Daniels, Katherine [katherine.daniels@state.or.us]
Sent: Thursday, March 14, 2013 1:43 PM
To: Cheryl Goodhue; LeBombard, Josh
Cc: Keith Cubic
Subject: RE: hearing on ter: plate dwellings

Thanks, Cheryl

Katherine Daniels, AICP | Farm and Forest Lands Specialist
Community Services Division
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Office: (503) 373-0050 ext. 329 | Fax: (503) 378-5518
katherine.daniels@state.or.us | www.oregon.gov/LCD

From: Cheryl Goodhue [mailto:cagoodhu@co.douglas.or.us]
Sent: Thursday, March 14, 2013 12:42 PM
To: Daniels, Katherine; LeBombard, Josh
Cc: Keith Cubic
Subject: RE: hearing on template dwellings

Hello Katherine and Josh,

Attached is the staff report and a Third Draft for the template dwelling amendment for the March 21st Planning Commission continued hearing.

Cheryl

Cheryl Goodhue, Planning Manager,
DOUGLAS COUNTY PLANNING DEPARTMENT
541.440.4289 541.440.6266 Fax
cagoodhu@co.douglas.or.us

From: Daniels, Katherine [mailto:katherine.daniels@state.or.us]
Sent: Thursday, March 14, 2013 8:31 AM
To: Cheryl Goodhue
Cc: LeBombard, Josh
Subject: hearing on template dwellings

Hi Cheryl,

I understand that there will be a public hearing on template dwellings on March 21st. Does the County's position on templates remain the same – that they are not land use decisions? If so, would you please email Josh and me a copy of the staff report before the hearing? Thank you.

Katherine

Katherine Daniels, AICP | Farm and Forest Lands Specialist
Community Services Division
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Office: (503) 373-0050 ext. 329 | Fax: (503) 378-5518
katherine.daniels@state.or.us | www.oregon.gov/LCD

3/21/2013

March 14, 2013

STAFF REPORT

TO: Planning Commission

FROM: Cheryl Goodhue, Planning Manager

RE: Proposed "Template Dwelling Standards Clarification" Legislative Amendment to the LUDO Continued to the March 21, 2013 Planning Commission Meeting from the January 10, 2013 Planning Commission Meeting

At the December 13, 2012 Planning Commission hearing, the above-referenced LUDO amendment was continued to the January 10, 2013 Planning Commission meeting, due to a considerable amount of testimony presented at the hearing. At the January 10, 2013 continued hearing, staff recommended that the matter be further continued to allow time for staff to fully address the complex and important issues associated with the proposed amendment. The Planning Commission continued the matter to a date certain, that being their March 21, 2013 meeting. There has been no further response submitted on the proposed amendment, subsequent to the testimony submitted at the December 13, 2012 hearing in the matter.

Attached is a THIRD DRAFT (March 2013) of the proposed amendment, which clarifies the provisions for authorization of a Template Dwelling building permit, and addresses the issue of notice requirements in consideration of those Template Dwelling standards that arguably may require discretion. Recently approved Template Dwellings, processed ministerially since their inception in 1993 (HB 3661) as "uses permitted with standards," have been individually appealed to the Land Use Board of Appeals based on the assertion that the Template Dwelling approval requires notice and an opportunity for a hearing, as its standards for approval require interpretation and the exercise of policy or legal judgement.

Under this amendment, the Planning Department will issue a decision in accordance with provisions of the LUDO, and shall mail a twelve-day notice of the decision to property owners within 750 feet of the property for which a Template Dwelling permit is authorized. An objector may appeal the decision for review by the Planning Commission.

The addition of a standard providing notice of a Template Dwelling permit authorization increases regulation *in terms of process only*. Notification of permit authorization is a measure taken to avoid further litigation and make the system work for citizens. This structure achieves the notice and opportunity objective raised in the individual appeals of Template Dwelling permit authorizations with maximum efficiency and minimum delay. It is designed to provide citizens with a positive outcome in the shortest time frame possible by avoiding individual appeal of an approval based on a procedural issue. In the case of the Template Dwelling Permit authorization, it is in the best interest of the citizens of this county to effect a change in process in order to protect their individual outcomes.

SUMMARY
LAND USE & DEVELOPMENT ORDINANCE AMENDMENT
TEMPLATE DWELLING PROVISIONS
THIRD DRAFT, MARCH 2013

CONTINUED FROM THE JANUARY 10, 2013 PLANNING COMMISSION MEETING
TO THE MARCH 21, 2013 PLANNING COMMISSION MEETING

Subject	Summary	Effect
1. Provisions for Forest Template Dwellings	This amendment clarifies the standards required for authorization of a forest template dwelling building permit, as provided for in the FF and AW zones, and adds a standard providing for notification of permit authorization.	Clarification & Process Change

Amendments to the

**DOUGLAS COUNTY LAND USE &
DEVELOPMENT ORDINANCE
(LUDO)**

THIRD DRAFT
March 2013

Planning Commission
January 10, 2013, **Template Dwelling Provisions**
continued to March 21, 2013

1. Forest Template Dwelling Provisions

Recently approved Template Dwellings, processed ministerially since their inception in 1993 (HB 3661) as "uses permitted with standards," have been individually appealed to the Land Use Board of Appeals based on the assertion that the Template Dwelling approval requires notice and an opportunity for a hearing, as its standards for approval require interpretation and the exercise of policy or legal judgement.

In reviewing Template Dwellings, some of the standards outlined in the provisions of ORS 215.750 can be argued to require some discretion. Therefore, under this amendment, the Planning Department will issue a decision in accordance with provisions of the LUDO, and shall mail a twelve-day notice of the decision to property owners within 750 feet of the property for which the Template Dwelling permit is authorized. An objector may appeal the decision for review by the Planning Commission.

The addition of a standard requiring notice of a Template Dwelling permit authorization increases regulation *in terms of process only*. Notification of permit authorization is a measure taken to avoid further litigation and make the system work for citizens. This structure achieves the notice and opportunity objective raised in the individual appeals with maximum efficiency and minimum delay. It is designed to provide citizens with a positive outcome in the shortest time frame possible by avoiding individual appeal of an approval based on a procedural issue. Many counties provide minimal notice, i.e., notice of decision only. It is in the best interest of the citizens of this county to effect a change in process to protect their individual outcomes. This amendment is needed to clarify template dwelling permit standards and to provide a standard for notice of template dwelling permit authorization. ♦ ♦
Effect: Clarification and Process Change

PROPOSED AMENDMENT TO THE LUDO

ACTION: CLARIFY PROVISIONS TO WHICH THE TEMPLATE DWELLING IS SUBJECT AT ***FF, §3.5.075.11*** (P. 3-53) AND AT ***AW, §3.6.075.2*** (P. 3-64); CLARIFY TEMPLATE DWELLING STANDARDS AND ADD NOTICE STANDARD AT ***ARTICLE 42, §3.42.100.8*** (P. 3-255).

NOTE: proposed additions are **bolded and underlined**; deletions are **~~struckout~~**.

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11. "Template" Dwelling, subject to the provisions of Article 42 and the **building permit siting** standards in §3.5.160 and §3.5.170 **of the FF zone**.

SECTION 3.6.075 Uses Permitted with Standards, AW

2. "Template" Dwelling, subject to the provisions of Article 42 and the **building permit siting** standards in §3.5.160 and §3.5.170 **of the AW zone**.

ARTICLE 42, Approval of Template Dwellings in the FF and AW Zone

SECTION 3.42.000 Purpose

The purpose of this article is to set forth the standards of ORS 215.750 to authorize issuance of a building permit ~~establish approval criteria for review and action on requests~~ for a Template Dwellings (so called because a 160 acre template is used on a map to depict ~~test~~ parcel eligibility). Requests for building permits under this Article shall be made to the Director ~~pursuant to §2-060-2 of this ordinance.~~

SECTION 3.42.100 Building Permits

1. Building permits proposed under this Article, for lands zoned FF or AW, shall conform to the following standards and notice requirement ~~criteria and shall be processed pursuant to §2-060-2.~~

[no change to 2., 3. or 4.]

5. The proposed Template Dwelling must comply with other requirements of the ~~Comprehensive Plan* and Land Use and Development Ordinance,~~ which carries out the Comprehensive Plan.

[no. change to 6. or 7.]

8. If the lot or parcel is greater than 10 acres, the property owner must submit a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.620 to 527.770 have been met.
9. A 12-day notice of a decision authorizing issuance of a building permit for a Template Dwelling shall be mailed to owners of property within 750 feet of the subject property for which the dwelling is authorized. The decision shall become final upon the expiration of the 12 days from the date the decision was mailed, unless an appeal for public hearing review is received within the 12-day period.

* NOTE: the statute does *not* state that a template dwelling must comply with other requirements of the Comprehensive Plan and Land Use and Development Ordinance, rather, it provides the disclaimer that a template dwelling is not allowed *if* it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations. Douglas County's Comprehensive Plan and LUDO are acknowledged. The standards of ORS/OAR for template dwellings are codified in LUDO and could not be codified if inconsistent with, or prohibited by, the County's acknowledged Comprehensive Plan.



PLANNING DEPARTMENT

Room 106 • Justice Building • Douglas County Courthouse
Roseburg, Oregon 97470

Agency Coordination • Administrative • Long Range • Support Services
(541) 440-4289 • (541) 440-6266 Fax

On-Site Services • Community Services
(541) 440-6183 • (541) 464-6443

AGENDA (541) 464-6429 Fax

This meeting may be audio recorded for live webcast (at www.co.douglas.or.us) or future broadcast. A CD copy is available upon written request made to the Information Technology department. Cost is \$5 per CD.

CALL TO ORDER

1. Approval of Minutes
- February 21, 2013, Regular Meeting
2. Election of Officers

FINDINGS OF FACT

3. **RICHARD AND ELLEN SCHULZ**, approval of a request for a Plan Amendment from Public/Semipublic (PSP) to Community Commercial (CC), in part, and Medium Density Residential (RMD), in part, and Zone Change from (PR) Public Reserve to (C-2) Community Commercial, in part, and (RS) Suburban Residential on a 3.50 acre property located on US Highway 101 in the Gardiner UUA. Coastal PAC. PD File 12-057.
4. **B. JOSEPH LEININGER**, approval of a request for a Conditional Use Permit to allow the mining and processing of aggregate and mineral resources in the (FF) Farm Forest zoned portion of a 587.03± acre property located off of a private easement off Speedway Road east of the Green UUA. Roseburg-Douglas PAC. PD File 12-063.

LEGISLATIVE HEARINGS

5. **PROPOSED LEGISLATIVE AMENDMENT TO THE COMPREHENSIVE PLAN**: update to the Population Element of the Plan to incorporate changes in population forecast rates provided by the City of Roseburg with associated modifications to County forecast rates and related data, *CONTINUED FROM THE JANUARY 10, 2013 PLANNING COMMISSION MEETING.*
6. **PROPOSED LEGISLATIVE AMENDMENT TO THE LAND USE & DEVELOPMENT ORDINANCE (LUDO)**: clarification of requirements for forest template dwellings, *CONTINUED FROM THE JANUARY 10, 2013 PLANNING COMMISSION MEETING.*

OTHER BUSINESS

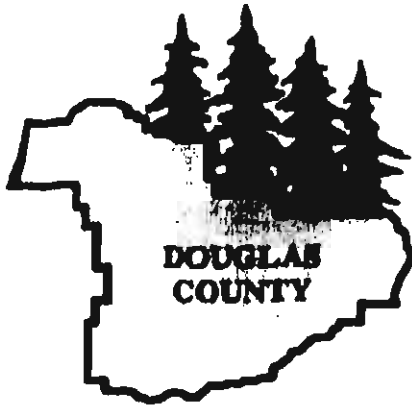
7. Business from the Audience
8. Business from the Planning Commission
9. Business from Planning Department

ADJOURNMENT

NOTE: No new agenda items will be introduced after 10:30 p.m. If continuance is necessary, the Planning Commission will schedule it to a time certain at the hearing.

♣ ♣ AMERICANS WITH DISABILITIES NOTICE ♣ ♣

As part of public policy, Douglas County will attempt to provide public accessibility to services, programs, and activities. If accommodation is needed to participate at this meeting, please contact the Douglas County Planning Department at 440-4289, at least 48 hours prior to the scheduled meeting time.



PLANNING DEPARTMENT

Room 106 • Justice Building • Douglas County Courthouse
Roseburg, Oregon 97470

Agency Coordination • Administrative • Long Range • Support Services
(541) 440-4289 • (541) 440-6266 Fax

On-Site Services Community Services
(541) 440-6183 (541) 464-6443
(541) 464-6429 Fax

AGENDA

This meeting may be audio recorded for live webcast (at www.co.douglas.or.us) or future broadcast. A CD copy is available upon written request made to the Information Technology department. Cost is \$5 per CD.

CALL TO ORDER

1. Approval of Minutes - December 13, 2012, Regular Meeting

LEGISLATIVE HEARINGS

2. **PROPOSED LEGISLATIVE AMENDMENT TO THE COMPREHENSIVE PLAN:** update to the Population Element of the Plan to incorporate changes in population forecast rates provided by the City of Roseburg with associated modifications to County forecast rates and related data, **continued from the December 13, 2012 Planning Commission Meeting.**
3. **PROPOSED LEGISLATIVE AMENDMENT TO THE LAND USE & DEVELOPMENT ORDINANCE (LUDO):** clarification of requirements for forest template dwellings, **continued from the December 13, 2012 Planning Commission Meeting.**

PUBLIC HEARING - QUASI - JUDICIAL

4. **RICHARD AND ELLEN SCHULZ,** request for a Plan Amendment from Public/Semipublic (PSP) to Community Commercial (CC), in part, and Medium Density Residential (RMD), in part, together with a Zone Change from (PR) Public Reserve to (C-2) Community Commercial, in part, and (RS) Suburban Residential, in part, to allow future commercial development in the C-2 zoned portion (1.75± acres) and to recognize two pre-existing residential dwellings on the RS zoned portion (1.75± acres) of the 3.50 acre subject property. The property is located on the east side of US Highway 101 in the Gardiner Urban Unincorporated Area (UUA), and is described as Tax Lot 300 in Section 22 of T21S, R12W, W.M.; Property ID No. R26591. The property is subject to the 100 Year Floodplain Overlay. Coastal Planning Advisory Committee (PAC). Planning Department File No. 12-057.

OTHER BUSINESS

5. Business from the Audience
6. Business from the Planning Commission
7. Business from the Planning Department

ADJOURNMENT

◆ ◆ AMERICANS WITH DISABILITIES NOTICE ◆ ◆
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DOUGLAS COUNTY PLANNING COMMISSION
DOUGLAS COUNTY COURTHOUSE, ROOM 216
DECEMBER 13, 2012, 7:00 P.M.

PLANNING DEPARTMENT

Room 106 • Justice Building • Douglas County Courthouse
Roseburg, Oregon 97470

Agency Coordination • Administrative • Long Range • Support Services
(541) 440-4289 • (541) 440-6266 Fax

On-Site Services Community Services
(541) 440-6183 (541) 464-6443
(541) 464-6429 Fax

AGENDA

CALL TO ORDER

1. Approval of Minutes
 - October 18, 2012, Regular Meeting
 - November 15, 2012, Legislative Workshop

This meeting may be audio recorded for live webcast (at www.co.douglas.or.us) or future broadcast. A CD copy is available upon written request made to the Information Technology department. Cost is \$5 per CD.

LEGISLATIVE HEARINGS

2. **PROPOSED LEGISLATIVE AMENDMENTS TO THE COMPREHENSIVE PLAN:** including housekeeping items involving updates to the Air Noise & Land, Natural Features and Housing Elements of the Plan; an update to the Transportation Element of the Plan to incorporate a de-regulatory change required by OAR 660-12-060 Rule Amendments, and; an update to the Population Element of the Plan to incorporate changes in population forecast rates provided by the City of Roseburg with associated modifications to County forecast rates and related data.
3. **PROPOSED LEGISLATIVE AMENDMENTS TO THE LAND USE & DEVELOPMENT ORDINANCE (LUDO):** including amendments to the dog kennel provisions of the LUDO resulting from HB 4170 in the 2012 Legislature; clarification of requirements for forest dwellings; a minor clarification regarding subdivision requirements and a clarification/enhancement consisting of a Plan Amendment process time line.

OTHER BUSINESS

4. Business from the Audience
5. Business from the Planning Commission
6. Business from Planning Department
 - **Update on the Regional Pilot Program from Planning Director Keith L. Cubic**

ADJOURNMENT

NOTE: No new agenda items will be introduced after 10:30 p.m. If continuance is necessary, the Planning Commission will schedule it to a time certain at the hearing.

♣ ♣ AMERICANS WITH DISABILITIES NOTICE ♣ ♣

As part of public policy, Douglas County will attempt to provide public accessibility to services, programs, and activities. If accommodation is needed to participate at this meeting, please contact the Douglas County Planning Department at 440-4289, at least 48 hours prior to the scheduled meeting time.

Cheryl Goodhue

From: Daniels, Katherine [katherine.daniels@state.or.us]
Sent: Thursday, December 13, 2012 4:06 PM
To: Cheryl Goodhue
Cc: LeBombard, Josh; Keith Cubic
Subject: PAPA letter review
Attachments: SKMBT_C55012121316540.pdf

Hi Cheryl,

I'm attaching a letter of comment re the most recent proposed change to the Douglas County LUDO. Thank you.

Katherine

Katherine Daniels, AICP | Farm and Forest Lands Specialist
Community Services Division
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Office: (503) 373-0050 ext. 329 | Fax: (503) 378-5518
katherine.daniels@state.or.us | www.oregon.gov/LCD



Oregon

Jana A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



December 13, 2012

Cheryl Goodhue, Planning Manager
Douglas County Planning Department
Room 106 Justice Building
Douglas County Courthouse
Roseburg, OR 97470

RE: PAPA 001-12 – Proposed Douglas County LUDO Revisions

Dear Cheryl,

Thank you for the opportunity to comment on the above-referenced proposal to amend the Douglas County LUDO. We have recently become aware of proposed changes that would make the review of template dwellings in forest zones a ministerial decision rather than a land use decision. The initial notice provided to our department did not include this amendment; therefore please send a revised notice to our department which includes this change per OAR 660-018-0045(1). Additionally, please enter the following comments into the record of all hearings on this proposal.

In the department's judgment, the review of template dwellings under ORS 215.750 is a land use decision under ORS 197.015(10) and not a ministerial decision because several of the applicable review criteria are discretionary and involve interpretation or policy judgment. In *Jones v. Douglas County* 63 Or LUBA 261 (2011), LUBA clearly stated that a decision approving or denying an owner-of-record dwelling under the criteria at ORS 215.705(1) and implementing rules and regulations does not fall within the exclusion at ORS 197.015(10)(b)(A), and is therefore a land use decision. LUBA found that while some of the criteria in ORS 215.705(1) are straightforward and in isolation capable of ministerial application, others are not, and cited three such criteria.

Similarly, the statutory review criteria for forest template dwellings include several discretionary criteria. While the staff report states that template dwellings are "permitted outright," nowhere in statute or rule is this term, or the concept normally associated with the term, used. Instead, counties "may allow" template dwellings, subject to several review criteria. Of these review criteria, the following are discretionary:

1 – ORS 215.750(4)(a) requires a determination whether the proposed dwelling is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations or other provisions of law (this is one of the same criteria cited by LUBA in *Jones v. Douglas County* in ORS 215.705(1) as being discretionary.)

2 – ORS 215.750(4)(b) requires a determination whether the proposed dwelling complies with the requirements of ORS 215.730. This section includes applicable stocking and fire safety review criteria, among others. ORS 215.730(1)(a)(B) requires the property owner to submit a stocking survey report to the assessor. The LCDC rule that implements this requirement (OAR 660-006-0029) provides more detailed direction, stating that the approval of the dwelling requires the owner to plant “a sufficient number of trees” on the tract to demonstrate that the tract “is reasonably expected” to meet Department of Forestry stocking requirements.

3 – ORS 215.730(2)(a) allows a governing body to determine whether fire protection requirements would be “impracticable,” in which case it may select other “reasonable” methods.

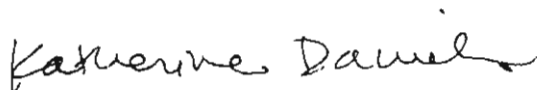
4 – ORS 215.750(4)(c) requires a determination of whether other dwellings are allowed on other lots or parcels that make up the tract and whether deed restrictions under ORS 215.740(3) are met.

5 – ORS 215.750(1)(a), (b) and (c) require a determination of cubic foot site class capability. Where such productivity information is unavailable, or when published NRCS data is challenged, discretion may be involved in County conclusions about forest land productivity.

In conclusion, all of the foregoing statutory and rule review criteria required to be used in making decisions on template dwellings involve discretion, interpretation or policy judgment. Template dwelling approvals therefore constitute land use decisions and must occur through the appropriate process.

You may contact me with any questions at katherine.daniels@state.or.us or 503-373-0050 ext. 329.

Sincerely,



Katherine H. Daniels, AICP
Farm and Forest Lands Specialist

Cc: Josh LeBombard

Cheryl Goodhue

From: Cheryl Goodhue
Sent: Tuesday, December 11, 2012 11:59 AM
To: 'katherine.daniels@state.or.us'
Cc: Keith Cubic; Josh LeBombard
Subject: Douglas County Legislative Amendments Second Draft
Attachments: LUDO AMEND SUM SECOND DRAFT 2012.pdf; LUDO AMENDMENTS SECOND DRAFT DECEMBER 2012.pdf; PLAN AMEND SUM SECOND DRAFT 2012.pdf; PLAN AMENDMENTS SECOND DRAFT DECEMBER 2012.pdf

Hello Katherine,

I am responding to two separate November 27, 2012 e-mails from you regarding Douglas County's 2012 proposed Legislative Amendments.

- 1) Regarding the CWPP, you asked if the County has incorporated ODF's relaxed fuel break standards in the Plan and applied them in the County's forest zones, which would be inconsistent with the OAR standards. The answer is no; there has been no change in required standards. The CWPP is on the County's website at <http://www.co.douglas.or.us/planning> (go to "Planning Department Home" then "Douglas County Wildfire Plans")
- 2) Regarding the forest stocking issue and the ambiguity in the statute/rule, we have removed the proposed amendment (which attempted to clarify the requirement) and retain the verbatim statutory standard in our code. In the same vein, we have added some clarification regarding other standards for the alternative forest dwelling otherwise known as the template.

I have attached the Second Drafts of both the Plan and LUDO proposed amendments, for your review.

Thank you,

Cheryl

**Cheryl Goodhue, Planning Manager,
DOUGLAS COUNTY PLANNING DEPARTMENT
541.440.4289 541.440.6266 Fax
cagoodhu@co.douglas.or.us**

SUMMARY
LAND USE & DEVELOPMENT ORDINANCE AMENDMENTS
SECOND DRAFT - DECEMBER 2012

Planning Commission Hearing: December 13, 2012

Board of Commissioners Adoption: January 9, 2013

Effective date of Amendments: February 8, 2013

Subject	Summary	Effect
1. Dog Training	HB 4170: This bill affects the definition of farm use by deleting the training and kenneling of greyhounds provision and replacing it with generic (all dogs) provisions for training and testing trials, both in the uses permitted with standards category and the conditionally permitted dog kennel category of ORS 215.283 (allowed EFU uses). The bill changes the definition of dog kennels conditionally permitted in EFU by qualifying them as commercial dog boarding kennels and removes the prohibition of establishing a new kennel on high value farmland.	Deregulation
2. Requirements for Certain Forest Dwellings	A clarifying amendment is needed to move the Template Dwelling, a forest dwelling permitted in statute and rule, from the "use permitted with standards" to the "permitted use" category, to reflect that the dwelling is a statutorily permitted use, subject to required building permit standards.	Clarification
3. Miscellaneous	Two minor clarifications are being added: 1) a clarification that the underground utilities requirement for subdivisions is only applicable in urban growth boundaries, and; 2) a graphic plan amendment process time line is being added to Chapter 6 for illustrative purposes.	Clarification

Amendments to the

**DOUGLAS COUNTY LAND USE &
DEVELOPMENT ORDINANCE
(LUDO)**

SECOND DRAFT

December 2012

Planning Commission
December 13, 2012

Board of Commissioners
January 9, 2013

LAND USE & DEVELOPMENT ORDINANCE AMENDMENTS

SECOND DRAFT - December 2012

AMENDMENTS RESULTING FROM LAW PASSED BY THE 2012 LEGISLATURE

1. **HB 4170, Dog Training:** This bill affects the statutory definition of farm use by deleting kenneling/training/etc. of greyhounds for profit and replacing it with generic (all dogs) provisions for training classes and testing trials both in the uses permitted with standards category and the conditionally permitted dog kennel category of ORS 215.283 (EFU uses). The uses permitted with standards provisions allow for dog training classes or testing trials in a preexisting farm building for: 1) training of up to 10 dogs in not more than 6 classes per day, and; 2) testing trials of not more than 60 dogs and limited to 4 or fewer trials per year. The bill changes the statutory definition of "dog kennels" conditionally permitted in EFU by qualifying them as **Commercial dog boarding** kennels, removing the prohibition on new kennels on high value land, and providing for dog training classes or testing trials that exceed the limitations of the use permitted with standards provisions; these aspects of the bill affect the LUDO 1.090 definition of kennel by removing the high value prohibition, but adding the qualifier that the definition of kennel as it applies in EFU is limited by ORS 215.283. The statutory EFU definition differs from the LUDO definition of "kennel" in that it does not include propagation and sale of dogs. The bill does not affect the LUDO definition of "farm use" because the greyhound provision had been added directly to the EFU-zone kennel provisions. ♦ ♦ **Effect: Deregulation**

ACTION: DELETE THE HIGH VALUE PROHIBITION FROM THE LUDO DEFINITION OF KENNEL AT 1.090 (DEFINITIONS) AND ADD QUALIFIER OF ORS LIMITATIONS IN EFU (P. 1-18)

KENNEL: A use providing for the accommodation of four or more dogs, cats, or other household pets at least four months of age, where such animals are kept for board, propagation, training or sale. However, the definition of "kennel" in the EFU zones is limited by ORS 215.283. ~~a new kennel is not permitted on lands designated as High Value farmland as defined in OAR 660-33-020(9).~~

ACTION: ADD NEW STATUTORY PROVISIONS FOR DOG TRAINING CLASSES AND TESTING TRIALS AS USES PERMITTED WITH STANDARDS IN THE **FG, 3.3.075**, (P.3-25), **FC, 3.4.075**, (P.3-39) AND **FF, 3.5.075** (P. 3-51) ZONES.

SECTION 3.3.075 Uses Permitted with Standards, FG

18. Dog training classes or testing trials, which may be conducted in a preexisting farm building when:
 - a. The number of dogs does not exceed 10 per training class and the number of classes held on-site does not exceed 6 per day; and,
 - b. The number of dogs in a testing trial does not exceed 60 and the number of trials held on-site does not exceed 4 per calendar

year.

SECTION 3.4.075 Uses Permitted with Standards, FC

18. Dog training classes or testing trials, which may be conducted in a preexisting farm building when:

- a. The number of dogs does not exceed 10 per training class and the number of classes held on-site does not exceed 6 per day; and,**
- b. The number of dogs in a testing trial does not exceed 60 and the number of trials held on-site does not exceed 4 per calendar year.**

SECTION 3.5.075 Uses Permitted with Standards, FF

18. Dog training classes or testing trials, which may be conducted in a preexisting farm building when:

- a. The number of dogs does not exceed 10 per training class and the number of classes held on-site does not exceed 6 per day; and,**
- b. The number of dogs in a testing trial does not exceed 60 and the number of trials held on-site does not exceed 4 per calendar year.**

*ACTION: ADD NEW STATUTORY PROVISIONS FOR DOG TRAINING CLASSES AND TESTING TRIALS AS USES PERMITTED WITH STANDARDS IN THE **FG, 3.3.075**, (P.3-25), **FC, 3.4.075**, (P.3-39) AND **FF, 3.5.075** (P. 3-51) ZONES.*

SECTION 3.3.100 Buildings and Uses Permitted Conditionally

12. Commercial Dog Boarding Kennels, including the breeding, kenneling and training of greyhounds for racing, except that, on high value farmland, new kennels may not be established. Existing kennels on high value farmland may be maintained, enhanced or expanded on the same tractor dog training classes or testing trials exceeding the uses permitted with standards of LUDO 3.3.075.

SECTION 3.4.100 Buildings and Uses Permitted Conditionally

12. Commercial Dog Boarding Kennels, including the breeding, kenneling and training of greyhounds for racing, except that, on high value farmland, new kennels may not be established. Existing kennels on high value farmland may be maintained, enhanced or expanded on the same tractor dog training classes or testing trials exceeding the uses permitted with standards of LUDO 3.4.075.

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

1. **Stocking requirements for Owner of Record and Template Dwellings:** In the FIRST DRAFT, October 2012, this section was intended to clarify how the stocking requirements of ORS 215.730 are carried out in the context of a dwelling approval. There is ambiguity in the law. The ORS states that if the parcel is over 10 acres, "the property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements (of DOF) have been met." The OAR 660-006-0029, "Siting Standards for Dwellings...in Forest Zones," (5)(c) further explains the intent of the requirement, stating that approval of a dwelling requires the owner to plant enough trees to meet stocking requirements at the time specified by DOF rules; under the rule, the planning department is required to notify the assessor of this condition upon approval of the dwelling. The assessor then coordinates with DOF to determine whether the stocking requirements are met and ultimately whether the property maintains special assessment.

The intent of the initially proposed amendment was to eliminate the requirement for proof that the stocking standards have been met as a condition of approval of the dwelling, since the requirement has to do with assessment which is out of the scope of the Planning review. However, after considerable discussion at the Planning Commission workshop and with DLCD, it has been concluded that, though unclearly stated in statute and rule, the legislative intent of the requirement is that the dwelling approval requires a confirmation that stocking standards have been met. **The proposed amendment has been removed** and the stocking requirement, as currently codified in LUDO, will continue to parrot the statutory provision for the Owner of Record provisions where the predominant use of the tract is forestry. With this amendment, the stocking requirement as currently codified in LUDO, will be added to the requirements for Template Dwellings where it had previously been inadvertently omitted. ♦ ♦ **Effect: No Change in existing OOR provision/Addition of existing provision language to Template Dwelling Standards**

ACTION: ADD THE STOCKING REQUIREMENT PROVISION TO THE TEMPLATE DWELLING REQUIREMENTS AT **3.42.100.8 (ARTICLE 42) (P.3-256)**

Article 42, Approval of Template Dwellings in the FF and AW Zone

Section 3.42.100, Building Permits

8. If the lot or parcel is greater than 10 acres, the property owner must submit a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

2. Other Requirements for Template Dwellings:

Background

Recently approved Template Dwellings processed ministerially as “uses permitted with standards” have been individually appealed to the Land Use Board of Appeals on the basis that the Template Dwelling approval requires notice and an opportunity for a hearing, as it is a land use decision requiring interpretation and the exercise of policy or legal judgement. The Template Dwelling is permitted outright in statute and rule, subject to the attendant clear and objective building permit standards.

A Template dwelling is a permitted use under statute and rule.

ORS 215.750(1): *“In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if...[standards follow]”*

- A Template dwelling is permitted, by statute, subject to the ORS standards.

OAR 660-006-0025, “Uses Authorized in Forest Zones,” states, *(1) Goal 4 requires that forest land be conserved... **the Commission has determined that five general types of uses, as set forth in the goals, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are: ... (d)Dwellings authorized by ORS 215.705 to 215.755.***

OAR 660-006-0027, “Dwellings in Forest Zones,” states, *The following standards apply to dwellings described at OAR 660-006-0025(1)(d): ...*

*(3) In western Oregon a governing body of a county or its designate may allow the establishment of a single family “**template**” dwelling authorized under **215.750** on a lot or parcel located within a forest zone if ...”[standards follow]*

- A Template dwelling is permitted, by rule, subject to the statute and rule standards, as codified in LUDO.

Legislative Intent

ORS 215.700, “Resource Land Dwelling Policy,” states

The Legislative Assembly declares that land use regulations limit residential development on some less productive resource land acquired before the owners could reasonably be expected to know of the regulations. In order to assist these owners while protecting the state’s more productive resource land from the detrimental effects of uses not related to agriculture and forestry, it is necessary to:

- (1) Provide certain owners of less productive land an opportunity to build a dwelling on their land;***

What follows is ORS 215.705, “Dwellings in farm or forest zone,” which states, *(1) A governing body of a county or its designate **may allow the establishment of a single-family dwelling** on a lot or parcel located within a farm or forest zone as*

set forth in this section **and ORS 215.710, 215.720, 215.740 and 215.750...after notifying the county assessor that a governing body intends to allow the dwelling.**

ORS 215.750: "Alternative forestland dwellings"; criteria, (otherwise known as **template dwellings**)

All dwelling provisions allowed under the cited statutes are subject to stringent standards which ensure that the legislative intent to provide **certain owners of less productive land a dwelling opportunity** while limiting future division and dwellings on more productive resource land, is achieved.

The template dwelling eligibility standards base preexisting parcelization and dwelling requirements (pre-1993) on soils capability of the tract according to NRCS mapping, increasing the pre-existing development which must exist and fall within a specified template placed on the center of a tract, in a direct correlation to capability of the soils on the tract, (i.e., the greater the mapped soil capability, the more preexisting development (pre-1993 dwellings and parcelization) is required on surrounding lands in order for a tract to be eligible for a template dwelling). Template Dwellings are not allowed in the Timberland Resource zone.

Forestland dwellings, such as the template dwelling, must meet the siting and fire siting standards of ORS 215.730, "Additional criteria for forestland dwellings under ORS 215.705," and OAR 660-006-0029, "Siting Standards for Dwellings and Structures in Forest Zones," and OAR 660-006-0035, "Fire- Siting Standards for Dwellings and Structures." These standards are designed to make the dwellings compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values of forest lands.

In OAR 660-006-0025, "Uses Authorized in Forest Zones," dwellings authorized by ORS 215.705 to 215.755 (template dwellings are authorized by 215.750), are among the list of **uses permitted in forest zones** along with "uses related to and in support of forest operations" and "uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agricultural and recreational opportunities appropriate in a forest environment." The preamble to the uses permitted in forest zones states, in relevant part,

(1) Goal 4 requires that forest land be conserved...the Commission has determined that five general types of uses...may be allowed in the forest environment, subject to the standards in the goal and in this rule...These general types of uses are: (a) Uses related to and in support of forest operations; (b) Uses to conserve soil, air and water quality.. ;(c)Locationally dependent uses...;**(d) Dwellings authorized by ORS 215.705 to 215.755;** and (e) Other dwellings under prescribed conditions.

The legislative intent behind the template dwelling provision was to provide owners of less productive land a dwelling opportunity while limiting dwellings on more productive lands through the imposition of clear and objective standards designed to ensure dwelling eligibility is limited to cases where a certain level of preexisting

development and parcelization exists on surrounding lands and additional dwellings are restricted through consolidation of the tract.

Clear and Object Standards; Not a Land Use Decision

ORS 197.015, "Definitions for ORS chapters 195, 106 and 197" states, in relevant part:

(10) "Land use decision:"

(b) Does not include a decision of a local government:

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgement;

(B) That approves or denies a building permit issued under clear and objective land use standards.

The ORS and rule standards to permit a Template Dwelling, as codified in LUDO, are clear and objective, **building permit** standards.

Article 42, "Approval of Template Dwellings in the FF and AW Zone," §3.42.100, **Building Permits** states,

1. **Building permits** proposed under this Article...

Template dwelling review is for a **building permit** subject to clear and objective standards which does not constitute a land use decision as stated in ORS 197.015(10)(B).

The clear and objective building permit standards of the template dwelling are those set forth by statute and are codified in LUDO at:

- LUDO §3.42.100.2., a., b., and c., which dictate the number (based on NRCS mapped soil capability) of preexisting (as of 1/1/93) lots or parcels and dwellings, all or part of which must fall within a 160 acre square centered on the center of the tract.
- LUDO §3.42.100.3, which adds the statutory provisions for a tract that abuts a pre-1993 road.
- LUDO §3.42.100.4, which adds the statutory provision that applies to a tract 60 acres or greater in size.
- LUDO §3.42.100.6, which sets forth the clear and objective statutory provisions that the tract: i) may not include a dwelling, and; ii) if comprised of two or more lots of record must be consolidated via a deed restriction.
- LUDO §3.42.100., which adds the statutory provision that lands within UGBs may not be used to satisfy dwelling/parcelization development requirements for template dwelling permits.

Template dwelling LUDO criteria are **clear and objective building permit** standards - as they are set forth in the statute and rule - that do not require interpretation or the exercise of policy or legal judgement. The issuance of a building permit for a template dwelling does not constitute a land use decision and is permitted outright, subject to the codified standards.

The siting standards and fire siting standards required for issuance of a building permit for a template dwelling in a forest zone -as they are set forth in statute and rule- are built into the development standards for dwellings in the forested zones in which they are allowed, FF and AW. The siting standards and fire siting standards required for issuance of a building permit for a template dwelling in a forest zone are **clear and objective building permit** standards applicable to any structural development in the permitting zones.

A clarifying amendment is needed to move the Template Dwelling to the permitted use category to accurately reflect its permitted outright status under statute and rule, subject to the statutorily required, clear and objective standards which must be met for issuance of a building permit approval for a template dwelling. ♦ ♦ **Effect: Clarification**

ACTION: MOVE THE TEMPLATE DWELLING PROVISION FROM A USE PERMITTED WITH STANDARDS TO A PERMITTED USE AT **FF, 3.5.075.11** (P. 3-53) AND AT **3.6.075.2** (P. 3-64); CLARIFY TEMPLATE DWELLING STANDARDS AT **3.42.100.8** (Article 42), (P. 3-256) TO REFLECT THAT THE STANDARDS FOR THE DWELLING ARE CLEAR AND OBJECTIVE, BUILDING PERMIT STANDARDS

SECTION 3.5.050 Permitted Uses, FF

- 5. "Template" Dwelling, subject to the provisions of Article 42 and the siting standards in §3.5.160 and §3.5.170.**

SECTION 3.5.075 Uses Permitted with Standards, FF

- ~~11. "Template" Dwelling, subject to the provisions of Article 42 and the siting standards in §3.5.160 and §3.5.170.~~

SECTION 3.6.050 Permitted Uses, AW

- 6. "Template" Dwelling, subject to the provisions of Article 42 and the siting standards in §3.5.160 and §3.5.170.**

SECTION 3.6.075 Uses Permitted with Standards, AW

- ~~2. "Template" Dwelling, subject to the provisions of Article 42 and the siting standards in §3.5.160 and §3.5.170.~~

ARTICLE 42, Approval of Template Dwellings in the FF and AW Zone

SECTION 3.42.000 Purpose

The purpose of this article is to ~~establish approval criteria~~ **set forth the standards of ORS 215.750 to permit issuance of a building permit** review and action on requests for a Template Dwellings (so called because a 160 acre template is used, on a map, to test parcel eligibility). ~~Requests for building permits under this Article shall be made to the Director pursuant to §2.060.2 of this ordinance.~~

SECTION 3.42.100 Building Permits

1. Building permits proposed under this Article, for lands zoned FF or AW, shall conform to the following standards as set forth in ORS 215.750: ~~criteria and shall be processed pursuant to §2.060-2:~~
2. A single family dwelling on a lot or parcel located within the FF or AW Zone may be allowed if the lot or parcel ~~was predominantly in forest use on January 1, 1993 (ref OAR 660-006-0050(2)), and~~ is predominantly composed of soils that are:

[no change to a. through c.]

[no change to 3. or 4.]
5. ~~The proposed Template Dwelling must comply with other requirements of the Comprehensive Plan and Land Use and Development Ordinance.~~

NOTE: the statute does *not* state that a template dwelling must comply with other requirements of the Comprehensive Plan and Land Use and Development Ordinance, rather, it provides the disclaimer that a template dwelling is not allowed *if* it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations. Douglas County's Comprehensive Plan and LUDO are acknowledged. The standards of ORS/OAR for template dwellings are codified in LUDO and could not be codified if inconsistent with, or prohibited by, the County's acknowledged Comprehensive Plan. A Template Dwelling approved under the LUDO code cannot be prohibited by the Comprehensive Plan, or noncompliant with the Comprehensive Plan, or noncompliant with the LUDO itself. Item no. 5 is extraneous and needs to be stricken.

[no. change to 5. or 6.]

3. **Subdivision Improvements: LUDO 4.400 Improvements**, delineates the improvements required for subdivisions. **4.400.1.c**, states that underground utilities are required if the average lot size is under 10,000 square feet. Clarification is need to specify that this requirement is only applicable in urban growth boundaries. ♦ ♦
Effect: Clarification

ACTION: ADD THE CLARIFICATION "IN URBAN GROWTH BOUNDARIES" TO THE UNDERGROUND UTILITY REQUIREMENT AT **4.400.1.c (P. 4-47)**

SECTION 4.100 Improvements

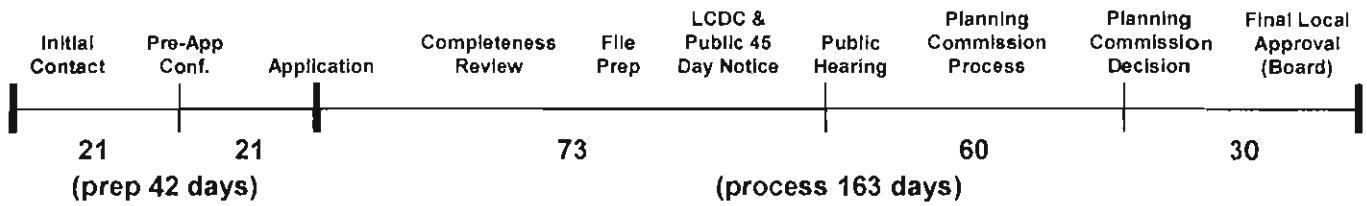
1. Improvement Requirements

- c. In developments in urban growth boundaries where the average lot size is under ten thousand (10,000) square feet, and where public water and sewer service are available, telephone and electric service shall be underground.

4. **Plan Amendment Time Line:** For illustrative purposes, add a standard time line for the Plan Amendment Process to Chapter 6, Quasi-judicial Plan Amendments. ♦ ♦
Effect: Clarification

ACTION: ADD A GRAPHIC PLAN AMENDMENT PROCESS TIME LINE AT THE END OF CHAPTER 6, (P. 6-5)

STANDARD PLAN AMENDMENT PROCESS TIMELINE



Cheryl Goodhue

From: Daniels, Katherine [katherine.daniels@state.or.us]
Sent: Tuesday, November 27, 2012 3:52 PM
To: Cheryl Goodhue
Cc: LeBombard, Josh
Subject: Douglas County PAPA 002-12

Hi Cheryl,

Following up on our earlier conversation, Douglas County proposes to incorporate its Wildfire Protection Plan into its comprehensive plan by cross-reference. We have not had the opportunity to review the Wildfire Protection Plan as it was not included as part of the submitted PAPA. If the Plan proposes to change any of the ODF primary or secondary fuel break standards referred to in OAR 660-006-0035(3) that constitute setbacks for dwellings and structures in forest zones, we would like to have the opportunity to review this language. Specifically, if the County has incorporated ODF's Urban Interface fire standards in OAR 629-044 that include more flexible fuel break standards, we would like to know the extent of application of these standards in the County's forest zones and have the opportunity to comment. Thank you.

Katherine

Katherine Daniels, AICP | Farm and Forest Lands Specialist
Community Services Division
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Office: (503) 373-0050 ext. 329 | Fax: (503) 378-5518
katherine.daniels@state.or.us | www.oregon.gov/LCD

Cheryl Goodhue

From: Daniels, Katherine [katherine.daniels@state.or.us]
Sent: Tuesday, November 27, 2012 3:42 PM
To: Cheryl Goodhue
Cc: LeBombard, Josh
Subject: forest stocking

Hi Cheryl,

Following up on our conversation this morning, it's interesting and a little perplexing that the statutory and rule provisions for stocking parcels should differ as they do. I don't know that I can shed a lot of light on this but I did spend some time talking with Rob Hallyburton about it. I'm guessing that the motivation in part was to clarify that the ODF is needed to help the assessor determine whether the stocking requirements have been met. The rule also seems to instruct the assessor on an on-going basis to determine continuing compliance and qualification for forest tax deferral, whereas the statute includes only a one-time check for compliance and that would be that the parcel is 20% stocked (year one of requirement). The statute says that the implementation of the stocking plan is a condition of approval for the dwelling, which Rob and I both take to mean that the issuance of the dwelling permit follows the implementation of the stocking plan. Yet the rule says only that the approval of a dwelling requires the planting of a sufficient number of trees to demonstrate that the tract is reasonably expected to meet ODF stocking requirements. As a modification of the stricter statutory requirement, this seems to me to indicate that while upfront planting is still required prior to getting a building permit, an approximation of the right number of trees is acceptable for this purpose and ODF approval can come later. I think this is meant to expedite the process for the landowner but not to do away with the requirement for some amount of upfront planting. Though I grant you the rule wording could be more specific. I was not able to find any relevant LUBA headnotes. It's an important issue as there are folks who aren't motivated to plant by the forest tax deferral option alone.

I hope this helps.

Katherine

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- DLCD Notice of Proposed Amendment or**
- Periodic Review work Task Proposed Hearing or**
- Urban Growth Boundary or Urban Reserve Area**

THIS COMPLETED FORM, including the text of the amendment and any supplemental information, **must be submitted to DLCD's Salem office at least 35 DAYS PRIOR TO THE FIRST EVIDENTIARY HEARING** ORS 197.610, OAR 660-018-0020 and OAR 660-025-0080

Jurisdiction: **DOUGLAS COUNTY**

Date of First Evidentiary Hearing: **12/13/2012**

Local File Number: **NA**

Date of Final Hearing: **01/09/2013**

Is this a **REVISION** to a previously submitted proposal? No Yes Original submittal date:

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment(s) | <input type="checkbox"/> Comprehensive Plan Map Amendment(s) |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment(s) | <input type="checkbox"/> Zoning Map Amendment(s) |
| <input type="checkbox"/> Transportation System Plan Amendment(s) | <input type="checkbox"/> Urban Growth Boundary Amendment(s) |
| <input type="checkbox"/> Periodic Review Work Task Number _____ | <input type="checkbox"/> Urban Reserve Area Amendment(s) |
| <input type="checkbox"/> Other (please describe): | |

Briefly Summarize Proposal in plain language IN THIS SPACE (maximum 500 characters):

LEGISLATIVE LUDO AMENDMENTS (GREEN COVER PAGE; FIRST DRAFT): AMENDMENTS TO DOG KENNEL PROVISIONS RESULTING FROM HB 4170 IN THE 2012 LEGISLATURE; CLARIFICATION OF STOCKING REQUIREMENTS FOR FOREST DWELLINGS; A MINOR CLARIFICATION REGARDING SUBDIVISION REQUIREMENTS AND A CLARIFICATION/ENHANCEMENT CONSISTING OF A PLAN AMENDMENT PROCESS TIME LINE FOR ILLUSTRATIVE PURPOSES.

Has sufficient information been included to advise DLCD of the effect of proposal? Yes, text is included

Are Map changes included: minimum 8½"x11" color maps of Current and Proposed designations. Yes, Maps included

Plan map change from: **NA** To: **NA**

Zone map change from: **NA** To: **NA**

Location of property (Site address and TRS): **NA**

Previous density range: _____ New density range: _____ Acres involved: _____

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"/> |

Is an exception to a statewide planning goal proposed? YES NO Goal(s):

Affected state or federal agencies, local governments or special districts (It is jurisdiction's responsibility to notify these agencies).

Local Contact person (name and title): **CHERYL GOODHUE, PLANNING MANAGER**

Phone: **541-440-4289**

Extension:

Address: **ROOM 106, JUSTICE BLDG., COURTHOUSE**

City: **ROSEBURG**

Zip: **97470-**

Fax Number: **541-440-6266**

E-mail Address: **cagoodhu@co.douglas.or.us**

- FOR DLCD internal use only -

DLCD File No _____

BEFORE THE DOUGLAS COUNTY PLANNING DEPARTMENT

In the matter of the 2012 AMENDMENTS
TO THE DOUGLAS COUNTY LAND USE
AND DEVELOPMENT ORDINANCE

) DLCD NOTICE OF PROPOSED AMENDMENTS
) LEGISLATIVE AMENDMENTS; FIRST DRAFT
)
) AFFIDAVIT OF MAILING

STATE OF OREGON)
) ss.
County of Douglas)

I, Gayle E. McKillop, being first duly sworn on oath, depose and say:

That I am employed by Douglas County, Oregon, as Planning Technician in the Planning Department.

That on the 29th day of October, 2012, in the capacity of my employment, I mailed the attached DLCD Notice of Proposed Amendment, with attached Land Use and Development Ordinance Amendments, First Draft, dated October, 2012, to DLCD at the address on the attached list, by placing a copy of this DLCD Notice of Proposed Amendment, with attached Land Use and Development Ordinance Amendments, First Draft, dated October, 2012, in an envelope, individually addressed to DLCD at the address on the attached list.

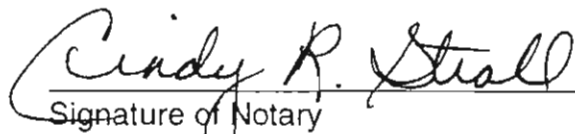
This envelope was then deposited at the Douglas County General Services Department who in turn, by use of a postage machine, sealed the envelope and applied the appropriate postage, then on that same date with the postage thereon fully paid, delivered the mail to the United States Post Office about 5:00 p.m.



Gayle E. McKillop, Planning Technician 2

Subscribed and sworn to before me this 29th day of October, 2012.





Signature of Notary

COUNTY PLANNING DEPARTMENT
RM 106, JUSTICE BUILDING
CLATSOP COUNTY COURTHOUSE
ROSEBURG, OR 97470



DEPT OF
MAY 10 2013
LAND CONSERVATION
AND DEVELOPMENT

ATTN: PLAN AMENDMENT
SPECIALIST
DLCD
635 CAPITOL STREET NE STE 150
SALEM OR 97301-2540