

W. G. C.

DATE: April 12, 2004 (Date of Memo)
April 28, 2004 (Date of First Reading)
May 12, 2004 (Date of Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: Public Works Department/Land Management Division

PRESENTED BY: Bill Sage, Associate Planner

AGENDA ITEM TITLE: ORDINANCE NO. 11-04 / IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO REVISE THE RURAL COMMERCIAL ZONE (RC, RCP), AS PART OF PERIODIC REVIEW AND TO AMEND THE FLOOR AREA STANDARD OUTSIDE UNINCORPORATED COMMUNITIES (LC 16.291)

I. MOTION

MOVE ADOPTION OF ORDINANCE NO. 11-04 WITH EXHIBITS.

II. ISSUES

A. Periodic Review Work Task 1 and Work Task 2 in Order No. 01431.

On October 31, 2002, the Oregon Land Conservation and Development Commission (LCDC) issued a partial approval of Periodic Review Work Task 1 and Approval of Work Task 2 in Order No. 01431. Order No. 01431 stated:

A large majority of the amendments comply with the statewide planning goals and are approved with the exception of Lane Code section 16.291(3)(u) as explained in the attached report. The Lane County Planning Director requested, and we agreed, to delay evaluation of this code section until the county concludes adoption of periodic review work task 3, which addresses unincorporated community issues in the Siuslaw watershed.

The LCDC Report concluded that Lane County's LC 16.291, as adopted in April 2002, complied with Goals 11 and 14 with one exception. In the Overall Conclusions and Decision section on page 5 of the Report, LCDC determined that:

Regarding compliance with OAR Chapter 660, Division 22 (the Unincorporated Communities Rule), the adopted updates are consistent except that LC 16.291(3)(u) is inconsistent with Goal 14.

All elements of Order No. 01-7-10-5 and Ordinances PA 1173 and 6-02 are approved except LC 16.291(3)(u). Review of LC 16.291(3)(u) is continued.

Refer to the attached Attachment C: LCDC Partial Approval of Periodic Review Work Task 1 and Approval of Work Task 2 in Order No. 01431 (October 31, 2002).

B. Consideration of amending the floor area limitations for commercial development outside rural community boundaries.

Citizen information sessions in the two Siuslaw and Long Tom Watersheds during 2003 included numerous discussions on the basis for the mandated 4,000 square foot floor area limitation for commercial uses within unincorporated rural communities. The discussions also included concerns regarding the 3,000 square foot floor area limitation for the same commercial uses within a developed and committed exception area outside a rural community boundary.

II. DISCUSSION

A. Background

Lane County adopted Lane Code 16.291 (Rural Commercial Zone, RC) on April 14, 2002, which became effective countywide on May 14, 2002 for lands designated for rural commercial use in the Rural Comprehensive Plan within Developed & Committed Exception Areas that were outside Unincorporated Rural Communities, and within the eight Unincorporated Rural Communities of the McKenzie Watershed. LC 16.291 became effective on March 18, 2004 following adoption of Ordinance No. PA 1194 by the Board of County Commissioners for the Periodic Review Work Program within the seventeen Unincorporated Rural Communities of the Siuslaw Watershed and Long Tom Watershed on February 18, 2004. LC 16.291 provisions are scheduled to become effective within the nine Unincorporated Rural Communities of the Coast Fork Willamette Watershed and Middle Fork Willamette Watershed in December 2004.

B. Analysis

a. Periodic Review Work Task 1 and Work Task 2 in Order No. 01431.

OAR 660-22-030(5) and LC 16.291(3)(u).

Lane Code 16.291(3)(u) provides for:

- “(u) Motels or hotels with up to 35 units, that meet the following conditions:
- (i) They are located at least 10 miles from the urban growth boundary of any city adjacent to Interstate Highway 5; and
 - (ii) They are served by a "community sewer system" that means, "A sewage disposal system with connections to at least 15 permanent dwelling units, including manufactured homes, within the unincorporated community."

LCDC seeks clarification in this section of Lane Code to ensure that LC 16.291(3)(u) complies with OAR 660-22-030(5):

(5) County plans and land use regulations may authorize hotels and motels in unincorporated communities only if served by a community sewer system and only as provided in (a) through (c) of this section:

The singular difference between the referenced OAR and the Lane Code provisions is the direct reference in the OAR that new hotels and motels can only be sited within the designated boundaries of an unincorporated community. Lane Code

16.291(3)(u) text assumes that limitation due to the qualifier in LC 16.291(3)(u)(ii) “. . . served by a ‘community sewer system’ . . .” The definition of “community sewer system” in OAR 660-22-010(2) limits such systems to unincorporated communities.

(2) *“Community Sewer System” means a sewage disposal system which has service connections to at least 15 permanent dwelling units, including manufactured homes, within the unincorporated community.*

LCDC’s reservation about the clarity of this subsection of Lane Code has merit when viewed from the perspective of Statewide Goals 1 and 2. Regulations should be clearly stated so that citizens are aware of the opportunities and limitations they may contain.

The proposed amendment to LC 16.291(3)(u) which would comply with the OAR is:

“(u) New motels or hotels with up to 35 units within an unincorporated rural community designated in the Rural Comprehensive Plan, or new motels or hotels with up to 100 units within an urban unincorporated community designated in the Rural Comprehensive Plan, that meet the following conditions:

(i) They are located at least 10 miles from the urban growth boundary of any city adjacent to Interstate Highway 5; and

(ii) They are served by a “community sewer system” that means, “A sewage disposal system with connections to at least 15 permanent dwelling units, including manufactured homes, within the unincorporated community.”

Refer to Exhibit A: Legislative Format – LC 16.291 (Proposed).

On December 17, 2003, DLCD (Hallyburton) notified Lane County Planning with Periodic Review Task 1 Remand Order 0011582, that the timeline for adoption of the proposed amendment to LC 16.291(3)(u) was extended from December 31, 2003 to March 31, 2004. Refer to Attachment “D” -- DLCD correspondence to Lane County Planning, December 17, 2003.

b. Consideration of amending the floor area limitations for commercial development outside rural community boundaries.

On April 14, 2002, the 4,000 square-foot of floor space standard mandated in OAR 660-022-0030(10) inside rural community boundaries to differentiate between “rural” and “urban” uses and to define “small-scale, low-impact commercial use” was adopted in Lane Code 16.291(4)(a).

Lane Code 16.291(4)(a) currently limits floor area for small-scale, low impact commercial uses outside of rural communities to 3,000 square-feet. The standard was adopted by the County as a clear and objective standard instead of the subjective criteria of Goal 14 to determine what commercial uses were “not more intensive” than similar rural uses allowed inside rural communities.

The Board of Commissioners has the option to amend or retain the 3,000 square-foot, floor area limitations of LC 16.291(4)(a) as an objective standard for commercial uses in developed & committed exception areas outside rural communities. The current standard limits development outside a rural community to 75% of the floor area for a similar use within a rural community.

The current documentation in the record does not include any identified differences in the types of small-scale, low impact uses in LC 16.291 that would necessarily need to be limited to inside rural community boundaries. In the rural area there are nodes of commercial development that have very diversified uses and intensities of development based primarily on the location of the property in relation to a major transportation corridor. Cultural and historical agrarian “communities” of the 19th and early 20th centuries do not always coincide with the commercial needs of 21st century rural residents or travelers. Like some public facilities such as RFPD fire stations, the location of where the commercial or retail service will be needed may dictate the siting of a particular use.

c. Other proposed amendments

Several housekeeping changes are proposed in LC 16.291(2)(b)(ii), (g), and (h); LC 16.292(3)(a), (c), (m), and (z); and LC 16.291(6)(i). The changes involve clarification of existing language and applicability of standards.

References to “signs” being allowed within the riparian setback area have been deleted.

The surface area for a sign has been reduced from 200 square feet to 100 square feet.

C. Planning Commission Recommendation

a. Periodic Review Work Task 1 and Work Task 2 in Order No. 01431.

The Planning Commission received written and oral testimony during the public hearings process on this issue and recommends that the Board adopt the proposed amendments to LC 16.291(3)(u).

b. Consideration of amending the floor area limitations for commercial development outside rural community boundaries.

The Planning Commission received oral testimony during the public hearings process on this issue. On December 2nd, The Commission entertained a motion to increase the floor area limitation to 4,000 square feet for a structure on a property designated as Rural Commercial (RC) and outside an unincorporated rural community boundary. The Commission deadlocked on a 3 to 3 vote and no recommendation was supported by a majority of the members present.

One week later, on December 8th, staff received a response from DLCD staff, Doug White, to the 30-day notice to DLCD for Ord. PA 1193. Mr. White followed up that conversation by providing a copy of the DLCD staff’s October 10, 2003 correspondence to Marion County regarding Marion County’s proposal to set the

floor area limitation at 3,800 square feet for a commercial structure on a rural commercial parcel outside of an unincorporated community. Refer to Attachment "E" -- DLCD correspondence to Marion County Planning, October 10, 2003. The DLCD position was that 3,800 square feet was not less intensive enough and that an acceptable, measurably less intensive ceiling would be 3,500 square feet. Based on the DLCD record previously with Polk County (Work Task Remand Order 02-WKTASK-001381) and now Marion County, any floor area limitation over 3,500 square feet would be challenged on review by LCDC.

LMD staff is recommending that the Board consider raising the floor area limitation for commercial uses from 3,000 square feet to 3,500 square feet on parcels or lots located outside unincorporated community boundaries.

c. Other proposed housekeeping amendments.

The Planning Commission received written and oral testimony during the public hearings process on the other proposed housekeeping amendments as presented in Exhibit "A" of Ordinance 11-04 and recommends adoption of the housekeeping amendments as summarized in B. Analysis, c. Other proposed amendments, above.

D. Alternatives/Options

1. Adopt Ordinance No. 11-04.
2. Do not adopt Ordinance No. 11-04.
3. Provide staff with direction to prepare modified or additional amendments to LC 16.291.

E. Staff Recommendation

Staff recommends Alternative 1., adoption of the Ordinance.

F. Timing

The Ordinance does not contain an emergency clause.

IV. FINDINGS

Findings of fact and conclusions of law relating to the proposed Lane Code amendments are attached to the Ordinance (Attachment "A") as Exhibit "A".

V. IMPLEMENTATION / FOLLOW-UP

Notice of the action will be provided to DLCD.

VI. ATTACHMENTS

- A. Ordinance No. 11-04.
Exhibit A: Findings
- B. LCDC Partial Approval of Periodic Review Work Task 1 and Approval of Work Task 2 in Order No. 01431 (October 31, 2002).
- C. 1. LCPC minutes: October 21, 2003 public hearing.

2. LCPC minutes: November 4, 2003 public hearing.
 3. LCPC minutes: December 2, 2003 deliberations.
- D. DLCDC correspondence to Lane County Planning, December 17, 2003.
 - E. DLCDC correspondence to Marion County Planning, October 10, 2003.

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 11-04

IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO REVISE THE RURAL COMMERCIAL ZONE (RC, RCP) AS PART OF PERIODIC REVIEW AND TO AMEND THE FLOOR AREA STANDARD OUTSIDE UNINCORPORATED COMMUNITIES (LC 16.291)

The Board of County Commissioners of Lane County ordains as follows:

Chapter 16 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

REMOVE THESE SECTIONS

16.291
pages 16-522 through 16-528
(a total of 7 pages)

INSERT THESE SECTIONS

16.291
pages 16-522 through 16-528
(a total of 7 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions and additions is to revise the Rural Commercial Zone (RC, RCP) as part of periodic review and to amend the floor area standard outside unincorporated communities (LC 16.291)

While not part of this Ordinance, findings attached as Exhibit "A" and incorporated herein by this reference are adopted in support of this decision.

ENACTED this _____ day of _____ 2004.

Chair, Board of County Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 11-9-2004 Lane County



OFFICE OF LEGAL COUNSEL

(a) **Property Line Setbacks.** Structures other than a fence or sign shall be located:

(i) At least 20 feet from the existing or planned (per LC Chapter 15) right-of-way of a State road, County road or a local access public road;

(ii) At least 10 feet from all other property lines; and

(ii) Notwithstanding LC 16.290(7)(a)(ii) above, a structure that contains less than 120 square feet of floor area and that is located more than 10 feet from other structures may be located in the 10 foot setback otherwise required by LC 16.290(7)(a)(ii) above provided it complies with LC 16.290(7)(d) below.

(b) The setback for property lines other than front-yard shall be five feet, except as provided below, for any lot or parcel containing less than 1 acre and created prior to March 30, 1984.

(c) For mobile homes to be located in lawfully existing mobile home parks, the setbacks from a projected or existing right-of-way of a County or local-access public road shall be the same as required above, and lesser setbacks from all other mobile home lot lines are permitted if in compliance with Oregon Administrative Rules, Chapter 814, Division 28 -- Department of Commerce, effective on April 1, 1986.

(d) **Class I Stream Riparian Setback Area.** The riparian setback area shall be the area between a line 50 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 50 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met.

(e) **Maintenance, Removal and Replacement of Indigenous Vegetation within the Riparian Setback Area.** Maintenance, removal and replacement of indigenous vegetation within the riparian setback area along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan must comply with the provisions of LC 16.253(2).

(f) Height. None.

(g) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement

(iii) Signs shall be limited to 200 square feet in area.

(h) **Parking.** Off street parking shall be provided in accordance with LC 16.250. *(Revised by Ordinance No. 6-02, Effective 5.16.02)*

RURAL COMMERCIAL ZONE (RC, RCP) RURAL COMPREHENSIVE PLAN

16.291 Rural Commercial Zone (RC, RCP).

(1) **Purpose.** The purposes of the Rural Commercial Zone (RC, RCP) are: to implement the policies of the Lane County Rural Comprehensive Plan (RCP), to allow commercial uses and development that are consistent with Goal 14 and that are for the retail trade of products or services needed by rural residents or by persons traveling through the rural area, and to provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan. LC 16.291 is not retroactive. The Director has no authority to initiate compliance with LC 16.291 for lawfully (per LC Chapter 16) existing uses.

(2) **Permitted Uses and Development.** The uses and development in LC 16.291(2)(a) through (k) below are allowed subject to compliance with the general

provisions and exceptions specified by this chapter of Lane Code and shall not be subject to compliance with the Site Review Procedures in LC 16.257.

(a) Maintenance, repair or replacement of lawfully (per LC Chapter 16) existing uses and development not authorized elsewhere by LC 16.291.

(b) The uses and development allowed by LC 16.291(3)(a) through (w), (y) through (z), and (a-a) below with approval of a special use permit are otherwise allowed without approval of a special use permit if they comply with these conditions:

(i) The use and development shall not change the number, size or location of existing commercial structures on the subject property, shall comply with the setback requirements of LC 16.291(6)(a) through (b) below, and shall not extend the commercial uses and development beyond the area of the existing commercial uses and development. The area of the existing commercial uses and development shall include all existing structures and outside areas used for the commercial use such as private drives, off street parking and loading areas, and outside storage areas; or

(ii) The use and development shall be a minor addition to a commercial structure that does not exceed 25 percent of the floor area of the structure that existed on the date that LC 16.291 was applied to the subject property and shall not be closer to a property line than the closest portion of existing commercial structures meeting the setbacks required by LC 16.291(6)(a) through (b) below. To verify compliance with these standards, the applicant shall submit to the Director an administrative application for verification of compliance and the Director shall determine if the addition to a commercial structure complies with these standards; or

(iii) The use and development shall be located at least 200 feet from all exterior boundaries of the subject property and shall meet the setbacks required by LC 16.291(6)(a) through (b) below; or

(iv) The proposed development is a sign that complies with LC 16.291(6)(d) below, and is located on the wall of an existing building or is located outside the structural setback areas designated by LC Chapters 15 and 16.

(v) Structures permitted by LC 16.291(2)(b)(ii) and (iii) above shall comply with the floor area and lot or parcel coverage requirements of LC 16.291(4)(a) below.

(c) Public and semi public structures and uses rendering direct service to the public in local areas such as utility substations, wells, underground utility lines that do not require a right-of-way more than 25 feet in width. For utility substations or buildings that are located within 100 feet of the boundaries of RR zoned property, native landscaping shall be provided between the utility substations or buildings and abutting RR zoned property to screen the utility substations or buildings from the view of the RR zoned property. Landscaping required by LC 16.291(2)(c) above shall be maintained.

(d) No more than eight dogs over six months in age on any tract subject to compliance with the following conditions:

(i) No more than two dogs shall be used for breeding.

(ii) The tract where the dogs are located shall not be used as a place of business where dogs are boarded, or where dogs are breed or sold, or where dogs receive medical care.

(e) Fish and wildlife habitat management.

(f) A single family living quarters for a caretaker that meets the following conditions:

(i) The single family living quarters shall be for a caretaker in conjunction with an existing commercial use permitted by LC 16.291(2)(a) through (b) above or (3)(a) through (w), (a-a) or (b-b) below and located on the same lot or parcel as the existing commercial use;

(ii) There shall not be any other living quarters or dwellings on the lot or parcel where the single family living quarters for the caretaker will be located; and

(iii) The living quarters shall be located in an existing structure or in an addition to an existing structure. Any required building permits and certificates of occupancy shall be obtained prior to use of the structure as a single family living quarters.

(g) A single family dwelling or manufactured dwelling in conjunction with an existing commercial use provided there is no other dwelling or single family living quarters on the same lot or parcel.

(h) Transportation facilities, services and improvements that are authorized by OAR 660-012-0065(3) and (4).

(i) Not more than one bed and breakfast accommodation on a lot or parcel and in a lawfully existing dwelling or manufactured dwelling. A bed and breakfast accommodation shall have no more than five sleeping rooms provided on a daily or weekly period, not to exceed 29 consecutive days, for the use of travelers or transients for a charge or fee. Provision of a morning meal is customary as implied by title.

(j) Not more than one residential home on a lot or parcel and in a lawfully existing dwelling or manufactured dwelling. "Residential home" means a residential treatment or training or an adult foster home licensed by or under the authority of the Department of Human Resources (DHR) under ORS 443.400 through 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 which provides residential care alone or in conjunction with treatment or training, or a combination thereof, for five or fewer individuals who need not be related. Staff persons required to meet DHR licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the home.

(k) Uses and development accessory to existing uses and development permitted by LC 16.291(2)(a) through (j) above or (3)(a) through (c-c) below.

(3) Uses and Development Subject to Approval by the Director. The uses and development in LC 16.291(3)(a) through (t), and (v) and (z) below not meeting the conditions in LC 16.291(2)(b) above, and the uses and development in LC 16.291(3)(w) through (y) and (a-a) through (b-b) below, may be allowed subject to: submittal of a land use application pursuant to LC 14.050; compliance with the applicable land use requirements of LC 16.291(4)(a) through (i) below and elsewhere in LC Chapter 16; and review and approval of the land use application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and the opportunity for appeal. The uses and development in LC 16.291(3)(u) and (c-c) below, may be allowed subject to: submittal of a land use application pursuant to LC 14.050; compliance with the applicable land use requirements elsewhere in LC Chapter 16; and review and approval of the land use application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and the opportunity for appeal.

(a) Retail trade of products, including: food, new general merchandise, second-hand general merchandise in an enclosed building; and building materials, hardware or farm equipment.

(b) Retail trade of hay, grains or goods for animal consumption or care.

(c) Retail trade of services, including: personal, finance, insurance, banking, real estate, professional, and the construction trades including but not limited to general contracting, carpentry, cabinetmaking, electrical, plumbing, and landscaping.

(d) Restaurants.

(e) Bars, nightclubs, taverns or brewpubs.

(f) Civic, social and fraternal meeting places, and educational facilities and services such as: nursery, primary and secondary education and special training schools such as those for vocations, trades, arts, music, dancing, driving, gymnastics and correspondence.

(g) Medical or veterinarian clinic.

- (h) Service stations and auto repair garages.
- (i) Bus passenger terminals.
- (j) Boat charter and rental, including fishing equipment.
- (k) Outdoor tourist attractions featuring displays of educational or historical value.
- (l) Day camp and picnic areas.
- (m) Indoor or outdoor recreational activities, including tennis courts, ice skating, roller skating and roller blading, riding stables, bowling, skiing, snowboarding and tobogganing, play lots or tot lots, playgrounds, game rooms, gymnasium, swimming pools, etc.
- (n) Indoor or outdoor theaters.
- (o) Post Office facilities.
- (p) Equipment rental and leasing service.
- (q) Recreational vehicle or boat storage, sales, repair and subordinate boat building that comprises less building floor area than used for boat sales or rentals.
- (r) Marina.
- (s) Outdoor car or truck sales lots, indoor truck or auto repair, and not including the outdoor storage of inoperable vehicles.
- (t) A commercial kennel or a commercial breeding kennel. A "commercial kennel" is a place of business where dogs are boarded. No more than two dogs shall be used for breeding. A "commercial breeding kennel" is a place of business for the breeding and/or selling of dogs.
- (u) New motels or hotels with up to 35 units within an unincorporated rural community designated in the Rural Comprehensive Plan, or new motels or hotels with up to 100 units within an urban unincorporated community designated in the Rural Comprehensive Plan, that meet the following conditions:
 - (i) They are located at least 10 miles from the urban growth boundary of any city adjacent to Interstate Highway 5; and
 - (ii) They are served by a "community sewer system" that means, "A sewage disposal system with connections to at least 15 permanent dwelling units, including manufactured homes, within the unincorporated community."
- (v) A recreation vehicle park that may include individual electrical, water and sanitation disposal system hookups. A sanitation disposal system approved by DEQ or a centralized, pump-out vault may be provided for off-loading in compliance with ORS. The stay limit for a recreational vehicle shall not exceed 29 consecutive days or more than 90 days in any calendar year or consecutive six-month period.
- (w) Communication facilities including but not limited to those for radio, television, computers, or satellites.
- (x) Telecommunication facilities, including towers, antennas, and ancillary facilities as allowed pursuant to LC 16.264.
- (y) Electric transmission lines that require a combined right-of-way of more than 25 feet in width.
- (z) Overnight accommodations that shall:
 - (i) Have no more than 15 guest rooms in a single structure. Food preparation and service in a centralized kitchen may be provided for guests only.
 - (ii) Have only minor incidental and accessory retail sales;
 - (iii) Be occupied only temporarily for the purpose:
 - (aa) Of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission if located within ¼ mile of fish bearing Class I waters, or
 - (bb) Of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and wildlife Commission; and
 - (iv) The Approval Authority may impose appropriate conditions.

(a-a) A short term stay facility for the homeless or transients that may include the provision of food and clothing for those staying in or visiting the facility provided the facility shall:

- (i) Be operated by a nonprofit organization or public agency;
- (ii) Contain no more than five bedrooms or sleeping rooms; and
- (iii) Limit the stay for any individual to no more than 29

consecutive days.

(b-b) Uses and development similar to uses and development allowed by LC16.291(3)(a) through (a-a) above if found by the Director to be clearly similar to the uses and development allowed by LC 16.291(3)(a) through (a-a) above. Such a finding shall be made by the Director, and shall comply with the following criteria:

(i) The use and development shall be consistent with the purpose in LC 16.291(1) above.

(ii) When compared with the uses and development permitted by LC 16.291(3)(a) through (a-a) above, the use and development shall be similar to one or more of these uses and development. A comparison shall include an analysis of the:

(aa) Goods or services traded from the site;

(bb) Bulk, size, and operating characteristics of the proposed use and development;

(cc) Parking demand, customer types and traffic generation;

and

(dd) Intensity of land use of the site.

(iii) The use and development shall not exceed the carrying capacity of the soil or of existing water supply resources and sewer services. Factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on site sewage disposal and water supply if a community sewer or water system is not available.

(iv) The use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.

(v) The use and development shall not include factories, warehouses, freight terminals, or wholesale distribution centers.

(vi) The use and development shall comply with LC 16.291(4)(a) through (h) below.

(vii) It shall be the applicant's responsibility to provide sufficient information to allow the Director to make the above determination.

(c-c) An expansion of a lawfully existing commercial use that shall:

(i) Not result in more than a 50% increase in the total square foot floor area devoted to the commercial use that existed on the subject lot or parcel when LC 16.291 became applicable to the subject lot or parcel; or

(ii) Not result in more than a 50% increase in the number of temporary overnight accommodations that existed on the subject lot or parcel when LC 16.291 became applicable to the subject lot or parcel; and

(iii) Be used primarily by rural residents and/or tourists.

(4) Criteria. New uses or development allowed by LC 16.291(3)(a) through (t), (v) through (w), (z), and (a-a) through (b-b) above, shall comply with the criteria in LC 16.291(4) below. Telecommunications facilities allowed by LC 16.291(3)(x) above shall comply with the requirements in LC 16.264.

(a) Floor Area and Lot or Parcel Coverage. If located in an area designated by the RCP as an unincorporated community, no one commercial building or combination of commercial buildings on a lot or parcel within an urban unincorporated community shall contain more than 8,000 square feet of floor area for the same commercial use; or, no one commercial building or combination of commercial buildings

on a lot or parcel in any other type of unincorporated community shall contain more than 4,000 square feet of floor area for the same commercial use unless the conditions in LC 16.291(4)(a) below are met. If not located in an area designated by the RCP as an unincorporated community, no commercial building or combination of commercial buildings on a lot or parcel shall contain more than 3,500 square feet of floor area for the same commercial use unless the commercial building is used as a country store (a building used primarily for the retail sale of groceries but containing at least 750 square feet of floor area used for other permitted commercial uses). A country store located outside an area designated by the RCP as an unincorporated community may contain a maximum of 3,750 square feet of floor area. An exception to the 8,000, 4,000 or 3,500 commercial building square feet floor area requirement in LC 16.291(4)(a) above may be allowed if it complies with these requirements:

(i) The exception shall be adopted by ordinance as part of an amendment to the RCP for a specific lot or parcel.

(ii) The exception shall be for an expansion of up to 50% of the existing square feet building floor area used for commercial uses.

(iii) The existing and proposed commercial uses shall:

(aa) Provide goods and services to primarily rural residents or persons traveling through the area;

(bb) Notwithstanding the small-scale commercial building floor area limits in OAR 660-022-0030(10), comply with OAR 660-022 (for commercial uses located inside unincorporated communities) or with the Statewide Planning Goals (for commercial uses located outside unincorporated communities); and

(cc) Fit within the uses allowed by LC 16.291(2) and/or (3) above.

(iv) No more than one exception pursuant to LC 16.291(4)(a) shall be allowed for the same lot or parcel.

(b) The location, design, size, shape and arrangement of the uses and structures shall be sufficient for the proposed intent and compatible with the surrounding vicinity.

(c) The quantity, location, height and materials of walls, fences, hedges, screen planting and landscape areas shall serve their intended purpose and shall minimize any adverse effect on existing or contemplated abutting land use.

(d) Suitable planting of ground cover or other surfacing shall be provided to prevent erosion and reduce dust, and suitable methods shall be provided for the continued maintenance of the planting or surfacing.

(e) The location, design and size of the uses shall be such that the residents or establishments to be accommodated will be adequately served by community facilities and services or by other facilities suitable for the intended uses.

(f) Based on anticipated traffic generation, adequate additional right-of-way and road improvements shall be provided by the development in order to address any traffic safety or congestion concerns created by the development. Consideration shall be given to the need and feasibility of widening and improving abutting streets to specifications of LC Chapter 15, "Roads," and also to the necessity for such additional requirements as lighting, sidewalks and turn and deceleration/acceleration lanes.

(g) There shall be a safe and efficient circulation pattern within the boundaries of the development. Consideration shall include the layout of the site with respect to the location and dimensions of vehicular and pedestrian entrances, exits, drives, walkways, buildings and other related facilities.

(h) There shall be adequate off street parking and loading/unloading facilities provided in a safe and efficient manner. Consideration shall include the layout of the parking and loading/unloading facilities, and their surfacing, lighting and landscaping.

(i) **Hazards and Impacts.** The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.

(j) The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available.

(5) **Area.** No minimum is established, except what is necessary to accommodate any necessary sewerage and potable water concerns. Divisions shall comply with LC Chapter 13.

(6) **Property Development Standards.** All uses and development permitted by LC 16.291(2) and (3) above shall comply with these development standards:

(a) **Property Line Setbacks.** Structures other than a fence or sign shall be located:

(i) At least 20 feet from the existing and planned right-of-way of a State road, County road or a local access public road specified in LC Chapter 15; and

(ii) At least 10 feet from all other property lines except as required in LC 16.291(6)(b) and (c) below.

(b) **Class I Stream Riparian Setback Area.** The riparian setback area shall be the area between a line 50 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 50 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met.

(c) **Maintenance, Removal and Replacement of Indigenous Vegetation within the Riparian Setback Area.** Maintenance, removal and replacement of indigenous vegetation within the riparian setback area along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan must comply with the provisions of LC 16.253(2).

(d) **Signs.**

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs may be illuminated but shall not be flashing or capable of movement.

(iii) Signs shall be limited to 100 square feet.

(iv) Signs shall not project above the height of the tallest structure on the property.

(v) Signs shall advertise uses and development that are permitted by LC 16.291(2)(a) through (j) or (3)(a) through (c-c) above and that are conducted on the same premises where the signs are located; or

(vi) Signs located in an area designated by the RCP as an unincorporated community shall advertise uses and development that are located in the same community where the signs are located and that are permitted by LC Chapter 16.

(e) **Parking.** Off street parking shall be provided in accordance with LC 16.250. *(Revised by Ordinance No. 6-02, Effective 5.16.02)*

Ordinance No. 11-04
Exhibit "A"
Findings

Finding 1. Lane Code 16.400(6)(i): This subsection of Lane Code requires that the adoption of amendments to the Rural Comprehensive Plan, and components thereto, be by ordinances. The adoption of Ordinance 11-04 would amend the Lane Code 16.291 of the Rural Comprehensive Plan by ordinance and therefore complies with this code requirement.

Finding 2. Lane Code 16.400(6)(h)(iii)(aa) requires Ordinance 11-04 to comply with applicable state laws and the Statewide Planning Goals. Based on the findings below, Ordinance 11-04 complies with applicable state laws and Statewide Planning Goals.

- a. Statewide Planning Goal 2 requires, "Opportunities shall be provided for review and comment by citizens during the preparation, review and revision of plans and implementation ordinances." Lane County provided the opportunities identified below for citizens to review and comment on the preparation, review and revision of Ord. 11-04. These opportunities were adequate to comply with Goal 2.
- At least 60 days in advance of the Board of County Commissioners' public hearing on May 12, 2004, Land Management Division (LMD) provided copies of the draft changes to the public in citizen information meetings in the rural communities of Crow (September 9, 2003), Mapleton (October 14, 2003), Elmira (October 16, 2003), to explain and discuss the proposed changes to Lane Code 16.291 Rural Commercial Zone (RC, RCP).
 - Display ads advertising a series of citizen information meetings including the time and place of the meetings for citizens to hear explanations by the LMD of the proposed Lane Code 16.291 Rural Commercial Zone (RC, RCP) changes and where citizens could get additional information, appeared in local periodicals on the following dates:
August 22, August 25, September 2, 2003, *The Register Guard*;
September 4, 2003, *Eugene Weekly*;
September 4, 2003, *West Lane News, Tri-County News*.
 - Display ads advertising a series of citizen information meetings and LCPC public hearings including the time and place of the meetings and hearings and where citizens could get additional information, appeared in local periodicals on the following dates:
 - October 8, 2003, *The Siuslaw News*;
 - October 9, 2003, *Eugene Weekly*;
 - October 16, 2003, *West Lane News, Tri-County News*;
 - A legal ad was published in the *The Register-Guard* on October 7, 2003 providing notice of the LCPC public hearing in Harris Hall of the Lane County Public Service Building on October 21, 2003.
 - A legal ad was published in the *The Register-Guard* on October 14, 2003 providing notice of the LCPC public hearing in the Mapleton High School Cafeteria on November 4, 2003.

- Beginning September 15, 2003, copies of the proposed changes to RCP Goal 2 Policies to implement changes to Lane Code 16.291 Rural Commercial Zone (RC, RCP), were available at the LMD for distribution to citizens.
 - On October 21, 2003, LCPC held a public hearing in Harris Hall of the Lane County Public Service Building in Eugene to receive citizen comments on proposed amendments to Lane Code Chapter 16.291.
 - On November 4, 2003, LCPC held a public hearing in Mapleton High School Cafeteria in Mapleton to receive citizen comments on proposed amendments to Lane Code Chapter 16.291.
 - On December 5, 2003, at least 30 days in advance of the Board of Commissioners' May 12, 2004 public hearing, LMD mailed to the Oregon Department of Land Conservation and Development (DLCD) a 30-day Periodic Review notice of the hearing and pending adoption, and two copies of the proposed changes to Lane Code 16.291 Rural Commercial Zone (RC, RCP).
 - At least 20 days in advance of the May 12, 2004 hearing, a legal ad was published in the *The Register-Guard* (on April 9, 2004) providing notice of the Board of Commissioners' public hearing in Commissioner's Conference Room of the Lane County Public Service Building on May 12, 2004.
 - On May 12, 2004, a public hearing was held by the Board of Commissioners in Commissioner's Conference Room of the Lane County Public Service Building of Eugene to receive citizen comments on the proposed changes to Lane Code 16.291 Rural Commercial Zone (RC, RCP)
- b. Ordinance 11-04 acknowledges the partial approval by Oregon Land Conservation & Development Commission of Lane County's Periodic Review Work Task 1 (McKenzie Watershed) in Partial Approval Order No. 01431, and implements text amendments in Lane Code 16.291(3)(u) to comply with the requirements of the Partial Approval Order.
 - c. Ordinance 11-04 acknowledges citizen comments received during citizen information meetings, written testimony submitted into the record, and testimony during the Lane County Planning Commission public hearings on October 21, 2003 and November 4, 2003.
 - d. Ordinance 11-04 acknowledges citizen testimony received during the Lane County Board of Commissioners public hearing on May 12, 2004.

**RURAL COMMERCIAL ZONE (RC, RCP)
RURAL COMPREHENSIVE PLAN**

16.291 Rural Commercial Zone (RC, RCP).

(1) Purpose. The purposes of the Rural Commercial Zone (RC, RCP) are: to implement the policies of the Lane County Rural Comprehensive Plan (RCP), to allow commercial uses and development that are consistent with Goal 14 and that are for the retail trade of products or services needed by rural residents or by persons traveling through the rural area, and to provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan. LC 16.291 is not retroactive. The Director has no authority to initiate compliance with LC 16.291 for lawfully (per LC Chapter 16) existing uses.

(2) Permitted Uses and Development. The uses and development in LC 16.291(2)(a) through (k) below are allowed subject to compliance with the general provisions and exceptions specified by this chapter of Lane Code and shall not be subject to compliance with the Site Review Procedures in LC 16.257.

(a) Maintenance, repair or replacement of lawfully (per LC Chapter 16) existing uses and development not authorized elsewhere by LC 16.291.

(b) The uses and development allowed by LC 16.291(3)(a) through (w), (y) through (z), and (a-a) below with approval of a special use permit are otherwise allowed without approval of a special use permit if they comply with these conditions:

(i) The use and development shall not change the number, size or location of existing commercial structures on the subject property, shall comply with the setback requirements of LC 16.291(6)(a) through (b) below, and shall not extend the commercial uses and development beyond the area of the existing commercial uses and development. The area of the existing commercial uses and development shall include all existing structures and outside areas used for the commercial use such as private drives, off street parking and loading areas, and outside storage areas; or

(ii) The use and development shall be a minor addition to a commercial structure that does not exceed 25 percent of the floor area of the structure that existed on the date that LC 16.291 was applied to the subject property and shall not be closer to a property line than the closest portion of existing commercial structures meeting the setbacks required by LC 16.291(6)(a) through (b) below. To verify compliance with ~~this condition~~ **these standards**, the applicant shall submit to the Director an ~~administrative ministerial~~ application for verification of compliance with ~~conditions~~. ~~The~~ ~~the~~ Director shall determine if the addition to a commercial structure complies with ~~this condition~~ **these standards**; or

(iii) The use and development shall be located at least 200 feet from all exterior boundaries of the subject property and shall meet the setbacks required by LC 16.291(6)(a) through (b) below; or

(iv) The proposed development is a sign that complies with LC 16.291(6)(d) below, and is located on the wall of an existing building or is located outside the structural setback areas designated by LC Chapters 15 and 16 ~~and is not illuminated~~.

(v) Structures permitted by LC 16.291(2)(b)(ii) and (iii) above shall comply with the floor area and lot or parcel coverage requirements of LC 16.291(4)(a) below.

(c) Public and semi public structures and uses rendering direct service to the public in local areas such as utility substations, wells, underground utility lines that do not require a right-of way more than 25 feet in width. For utility substations or buildings

that are located within 100 feet of the boundaries of RR zoned property, native landscaping shall be provided between the utility substations or buildings and abutting RR zoned property to screen the utility substations or buildings from the view of the RR zoned property. Landscaping required by LC 16.291(2)(c) above shall be maintained.

(d) No more than eight dogs over six months in age on any tract subject to compliance with the following conditions:

(i) No more than two dogs shall be used for breeding.

(ii) The tract where the dogs are located shall not be used as a place of business where dogs are boarded, or where dogs are bred or sold, or where dogs receive medical care.

(e) Fish and wildlife habitat management.

(f) A single family living quarters for a caretaker that meets the following conditions:

(i) The single family living quarters shall be for a caretaker in conjunction with an existing commercial use permitted by LC 16.291(2)(a) through (b) above or (3)(a) through (w), (a-a) or (b-b) below and located on the same lot or parcel as the existing commercial use;

(ii) There shall not be any other living quarters or dwellings on the lot or parcel or tract where the single family living quarters for the caretaker will be located; and

(iii) The living quarters shall be located in an existing structure or in an addition to an existing structure. Any required building permits and certificates of occupancy shall be obtained prior to use of the structure as a single family living quarters.

(g) A single family dwelling or manufactured dwelling in conjunction with an existing commercial use provided there is no other dwelling or single family living quarters on the same lot or parcel tract.

(h) Transportation facilities, services and improvements that are authorized by OAR 660-012-0065(3) and (4) and that are part of an adopted Transportation System Plan.

(i) Not more than one bed and breakfast accommodation on a lot or parcel and in a lawfully existing dwelling or manufactured dwelling. A bed and breakfast accommodation shall have no more than five sleeping rooms provided on a daily or weekly period, not to exceed 29 consecutive days, for the use of travelers or transients for a charge or fee. Provision of a morning meal is customary as implied by title.

(j) Not more than one residential home on a lot or parcel and in a lawfully existing dwelling or manufactured dwelling. "Residential home" means a residential treatment or training or an adult foster home licensed by or under the authority of the Department of Human Resources (DHR) under ORS 443.400 through 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 which provides residential care alone or in conjunction with treatment or training, or a combination thereof, for five or fewer individuals who need not be related. Staff persons required to meet DHR licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the home.

(k) Uses and development accessory to existing uses and development permitted by LC 16.291(2)(a) through (j) above or (3)(a) through (c-c) below.

(3) Uses and Development Subject to Approval by the Director. The uses and development in LC 16.291(3)(a) through (t), and (v) and (z) below not meeting the conditions in LC 16.291(2)(b) above, and the uses and development in LC 16.291(3)(w) through (y) and (a-a) through (b-b) through (e-e) below, are may be allowed subject to:

submittal of a land use application pursuant to LC 14.050; compliance with the applicable land use requirements of LC 16.291(4)(a) through (i) below and elsewhere in LC Chapter 16; and review and approval of the land use application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and the opportunity for appeal. **The uses and development in LC 16.291(3)(u) and (c-c) below, may be allowed subject to: submittal of a land use application pursuant to LC 14.050; compliance with the applicable land use requirements elsewhere in LC Chapter 16; and review and approval of the land use application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and the opportunity for appeal.**

(a) Retail trade of products, including: food, new general merchandise, second-hand general merchandise in an enclosed building; and building materials, hardware or farm equipment.

(b) Retail trade of hay, grains or goods for animal consumption or care.

(c) Retail trade of services, including: personal, finance, insurance, banking, real estate, ~~and~~ professional, **and the construction trades including but not limited to general contracting, carpentry, cabinetmaking, electrical, plumbing, and landscaping.**

(d) Restaurants.

(e) Bars, nightclubs, taverns or brewpubs.

(f) Civic, social and fraternal meeting places, and educational facilities and services such as: nursery, primary and secondary education and special training schools such as those for vocations, trades, arts, music, dancing, driving, gymnastics and correspondence.

(g) Medical or veterinarian clinic.

(h) Service stations and auto repair garages.

(i) Bus passenger terminals.

(j) Boat charter and rental, including fishing equipment.

(k) Outdoor tourist attractions featuring displays of educational or historical value.

(l) Day camp and picnic areas.

(m) Indoor or outdoor recreational activities, including tennis courts, ice skating, roller skating **and roller blading**, riding stables, bowling, skiing, **snowboarding** and tobogganing, play lots or tot lots, playgrounds, game rooms, gymnasium, swimming pools, etc.

(n) Indoor or outdoor theaters.

(o) Post Office facilities.

(p) Equipment rental and leasing service.

(q) Recreational vehicle or boat storage, sales, repair and subordinate boat building that comprises less building floor area than used for boat sales or rentals.

(r) Marina.

(s) Outdoor car or truck sales lots, indoor truck or auto repair, and not including the outdoor storage of inoperable vehicles.

(t) A commercial kennel or a commercial breeding kennel. A "commercial kennel" is a place of business where dogs are boarded. No more than two dogs shall be used for breeding. A "commercial breeding kennel" is a place of business for the breeding and/or selling of dogs.

(u) ~~Motels~~—**New motels** or hotels with up to 35 units within an unincorporated rural community designated in the Rural Comprehensive Plan, or **new motels or hotels with up to 100 units within an urban unincorporated**

community designated in the Rural Comprehensive Plan, that meet the following conditions:

(i) They are located at least 10 miles from the urban growth boundary of any city adjacent to Interstate Highway 5; and

(ii) They are served by a "community sewer system" that means, "A sewage disposal system with connections to at least 15 permanent dwelling units, including manufactured homes, within the unincorporated community."

(v) A recreation vehicle park that may include individual electrical, water and sanitation disposal system hookups. A sanitation disposal system approved by DEQ or a centralized, pump-out vault may be provided for off-loading in compliance with ORS. The stay limit for a recreational vehicle shall not exceed 29 consecutive days or more than 90 days in any calendar year or consecutive six-month period.

(w) Communication facilities including but not limited to those for radio, television, computers, or satellites.

(x) Telecommunication facilities, including towers, antennas, and ancillary facilities as allowed pursuant to LC 16.264.

(y) Electric transmission lines that require a combined right-of-way of more than 25 feet in width.

(z) Overnight accommodations that shall:

(i) Have no more than 15 guest rooms ~~as that term is defined in the Oregon Structural Specialty Code;~~ in a single structure. Food preparation and service in a centralized kitchen may be provided for guests only.

(ii) Have only minor incidental and accessory retail sales;

(iii) Be occupied only temporarily for the purpose:

(aa) Of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission if located within ¼ mile of fish bearing Class I waters, or

(bb) Of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and wildlife Commission; and

(iv) The Approval Authority may impose appropriate conditions.

(a-a) A short term stay facility for the homeless or transients that may include the provision of food and clothing for those staying in or visiting the facility provided the facility shall:

(i) Be operated by a nonprofit organization or public agency;

(ii) Contain no more than five bedrooms or sleeping rooms; and

(iii) Limit the stay for any individual to no more than 29 consecutive days.

(b-b) Uses and development similar to uses and development allowed by LC16.291(3)(a) through (a-a) above if found by the Director to be clearly similar to the uses and development allowed by LC 16.291(3)(a) through (a-a) above. Such a finding shall be made by the Director, and shall comply with the following criteria:

(i) The use and development shall be consistent with the purpose in LC 16.291(1) above.

(ii) When compared with the uses and development permitted by LC 16.291(3)(a) through (a-a) above, the use and development shall be similar to one or more of these uses and development. A comparison shall include an analysis of the:

(aa) Goods or services traded from the site;

(bb) Bulk, size, and operating characteristics of the proposed use and development;

(cc) Parking demand, customer types and traffic generation;
and

(dd) Intensity of land use of the site.

(iii) The use and development shall not exceed the carrying capacity of the soil or of existing water supply resources and sewer services. Factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on site sewage disposal and water supply if a community sewer or water system is not available.

(iv) The use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.

(v) The use and development shall not include factories, warehouses, freight terminals, or wholesale distribution centers.

(vi) The use and development shall comply with LC 16.291(4)(a) through (h) below.

(vii) It shall be the applicant's responsibility to provide sufficient information to allow the Director to make the above determination.

(c-c) An expansion of a lawfully existing commercial use that shall:

(i) Not result in more than a 50% increase in the total square foot floor area devoted to the commercial use that existed on the subject lot or parcel when LC 16.291 became applicable to the subject lot or parcel; or

(ii) Not result in more than a 50% increase in the number of temporary overnight accommodations that existed on the subject lot or parcel when LC 16.291 became applicable to the subject lot or parcel; and

(iii) Be used primarily by rural residents and/or tourists.

(4) Criteria. New uses or development allowed by LC 16.291(3)(a) through (t), (v) through (w), (z), and (a-a) through (b-b)(e-e) above, ~~except for telecommunications facilities allowed by LC 16.291(3)(x) above,~~ shall comply with the criteria in LC 16.291(4) below. Telecommunications facilities allowed by LC 16.291(3)(x) above shall comply with the requirements in LC 16.264.

(a) Floor Area and Lot or Parcel Coverage. If located in an area designated by the RCP as an unincorporated community, no one commercial building or combination of commercial buildings on a lot or parcel ~~within an urban unincorporated community shall contain more than 8,000 square feet of floor area for the same commercial use; or, no one commercial building or combination of commercial buildings on a lot or parcel in any other type of unincorporated community shall contain more than 4,000 square feet of floor area for the same commercial use unless the conditions in LC 16.291(4)(a) below are met.~~ If not located in an area designated by the RCP as an unincorporated community, no commercial building or combination of commercial buildings on a lot or parcel shall contain more than ~~3,000~~3,500 square feet of floor area for the same commercial use unless the commercial building is used as a country store (a building used primarily for the retail sale of groceries but containing at least 750 square feet of floor area used for other permitted commercial uses). A country store located outside an area designated by the RCP as an unincorporated community may contain a maximum of 3,750 square feet of floor area. An exception to the 8,000, 4,000 or ~~3,000~~500 commercial building square feet floor area requirement in LC 16.291(4)(a) above may be allowed if it complies with these requirements:

(i) The exception shall be adopted by ordinance as part of an amendment to the RCP for a specific lot or parcel.

(ii) The exception shall be for an expansion of up to 50% of the existing square feet building floor area used for commercial uses.

(iii) The existing and proposed commercial uses shall:

(aa) Provide goods and services to primarily rural residents or persons traveling through the area;

(bb) Notwithstanding the small-scale commercial building floor area limits in OAR 660-022-0030(10), comply with OAR 660-022 (for commercial uses located inside unincorporated communities) or with the Statewide Planning Goals (for commercial uses located outside unincorporated communities); and

(cc) Fit within the uses allowed by LC 16.291(2) and/or (3) above.

(iv) No more than one exception pursuant to LC 16.291(4)(a) shall be allowed for the same lot or parcel.

(b) The location, design, size, shape and arrangement of the uses and structures shall be sufficient for the proposed intent and compatible with the surrounding vicinity.

(c) The quantity, location, height and materials of walls, fences, hedges, screen planting and landscape areas shall serve their intended purpose and shall minimize any adverse effect on existing or contemplated abutting land use.

(d) Suitable planting of ground cover or other surfacing shall be provided to prevent erosion and reduce dust, and suitable methods shall be provided for the continued maintenance of the planting or surfacing.

(e) The location, design and size of the uses shall be such that the residents or establishments to be accommodated will be adequately served by community facilities and services or by other facilities suitable for the intend uses.

(f) Based on anticipated traffic generation, adequate additional right-of-way and road improvements shall be provided by the development in order to address any traffic safety or congestion concerns created by the development. Consideration shall be given to the need and feasibility of widening and improving abutting streets to specifications of LC Chapter 15, "Roads," and also to the necessity for such additional requirements as lighting, sidewalks and turn and deceleration/acceleration lanes.

(g) There shall be a safe and efficient circulation pattern within the boundaries of the development. Consideration shall include the layout of the site with respect to the location and dimensions of vehicular and pedestrian entrances, exits, drives, walkways, buildings and other related facilities.

(h) There shall be adequate off street parking and loading/unloading facilities provided in a safe and efficient manner. Consideration shall include the layout of the parking and loading/unloading facilities, and their surfacing, lighting and landscaping.

(i) Hazards and Impacts. The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.

(j) The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available.

(5) Area. No minimum is established, except what is necessary to accommodate any necessary sewerage and potable water concerns. Divisions shall comply with LC Chapter 13.

(6) Property Development Standards. All uses and development permitted by LC 16.291(2) and (3) above shall comply with these development standards:

(a) Property Line Setbacks. Structures other than a fence or sign shall be located:

(i) At least 20 feet from the existing ~~or~~ and planned right-of-way of a State road, County road or a local access public road specified in LC Chapter 15; and

(ii) At least 10 feet from all other property lines except as required in LC 16.291(6)(b) and (c) below.

(b) Class 1 Stream Riparian Setback Area. The riparian setback area shall be the area between a line 50 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence ~~or sign~~ shall be located closer than 50 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met.

(c) Maintenance, Removal and Replacement of Indigenous Vegetation within the Riparian Setback Area. Maintenance, removal and replacement of indigenous vegetation within the riparian setback area along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan must comply with the provisions of LC 16.253(2).

(d) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs may be illuminated but shall not be flashing or capable of movement.

(iii) Signs shall be limited to ~~200~~100 square feet.

(iv) Signs shall not project above the height of the tallest structure on the property.

(v) Signs shall advertise uses and development that are permitted by LC 16.291(2)(a) through (j) or (3)(a) through (c-c) above and that are conducted on the same premises where the signs are located; or

(vi) Signs located in an area designated by the RCP as an unincorporated community shall advertise uses and development that are located in the same community where the signs are located and that are permitted by LC Chapter 16.

(e) Parking. Off street parking shall be provided in accordance with LC 16.250. *(Revised by Ordinance No. 6-02, Effective 5.16.02)*



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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October 31, 2002

The Honorable Bill Dwyer, Chair
Lane County Board of Commissioners
125 East 8th Avenue
Eugene, Oregon 97401



Re: Partial Approval of Periodic Review Work Task 1 and Approval of Work Task 2
Order No. 01431

Dear Mr. Dwyer:

I am pleased to inform you that the Department of Land Conservation and Development (DLCD) has approved the county's periodic review work task 2 (zoning of rural residential lands) and approved all but one amendment made in task 1 (McKenzie Watershed unincorporated communities) and continued review of the remainder of that task (hotels and motels outside unincorporated communities). This letter constitutes the department's order approving these tasks (Oregon Administrative Rule (OAR) 660-25-150(1)(a)).

The department has conducted a review of the above work task pursuant to OAR 660-025-0140(6) and prepared the attached report. A large majority of the amendments comply with the statewide planning goals and are approved with the exception of Lane Code section 16.291(u)(3) as explained in the attached report. The Lane County Planning Director requested, and we agreed, to delay evaluation of this code section until the county concludes adoption of periodic review work task 3, which addresses unincorporated community issues in the Siuslaw watershed.

The county or objectors may appeal the department's order to Land Conservation and Development Commission. Appeals must be in writing and received by the department's office in Salem by 5:00 p.m. on November 21, 2002. Appeals to the commission are governed by OAR 660-025-0150(3).

If you have any questions please feel free to contact your periodic review team leader and field representative, Rob Hallyburton, at (503) 373-0050 extension 239.

Sincerely,

Michael J. Rupp
Rural and Community Services Coordinator

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c: Kent Howe, Lane County Planning Director
Robert A. Manseth
Jim Welsh, Eugene Association of Realtors
Dale A. Saari, Central Oregon Coast Board of Realtors
Brenda Cansler, DLCD
Rob Hallyburton (e-mail)
State Periodic Review Assistance Team (e-mail)

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**Department of Land Conservation and Development
Report on Lane County Periodic Review
Work Tasks 1 and 2 Submittal
Order No. 01431**

October 31, 2002

DECISION

The actions of Lane County to address work tasks 1 and 2 on the approved work program are, with one exception, found to be in compliance with the statewide planning goals and rules, based on the findings contained in this report. The work tasks are approved with the exception the amended LC 16.291(u)(3) provision for motels and hotels outside unincorporated communities, for which DLCD review is continued.

REVIEW CRITERIA

ORS 197.644 and OAR 660-025-0140 through 660-025-0150 authorize the director's review of submitted periodic review work tasks. The legal standards that govern department reviews are the statewide planning goals (particularly Goal 14) and Oregon Administrative Rules in Chapter 660.

BACKGROUND

Just after Lane County adopted comprehensive plan and zoning code amendments in fulfillment of requirements of their periodic review work program, the county also amended its work program to reflect changing planning needs. During the county's periodic review, the Land Conservation and Development Commission (LCDC) adopted a new administrative rule (OAR 660-004-0040, the "rural residential rule") that affected the county's on-going plan update process and necessitated a change to the work program. The amendments submitted by the county involved pieces of several work tasks, so the updated work program rearranged and consolidated the work actually performed into tasks 1 and 2. The work program update came after adoption of the plan and ordinance amendments, but before this report. We refer to tasks as they are organized in the new work program.

Lane County has addressed statewide planning Goal 14 in its submittal. In work task 1, the county addressed the requirements of OAR Chapter 660, Division 22, the "Unincorporated Communities Rule" (or "UC rule") and complete coordination agreements under ORS 195.020 and 195.025. Under work task 2, the county updated its comprehensive plan and zoning requirements to address the rural residential rule and statewide planning Goals 11 and 14 countywide for residential, commercial, industrial, and public lands outside communities.

On July 10, 2001, the Lane County Board of Commissioners adopted Order No. 01-7-10-5 authorizing coordination agreements with each of the special service districts within the McKenzie River watershed, which were subsequently executed by the county administrator. On April 17, 2002 the Board of Commissioner adopted two ordinances. First, Ordinance PA 1173 amended the county comprehensive plan by revising goals, policies, designation descriptions, and the plan map to comply with the UC rule and statewide planning Goal 14 for lands within and outside unincorporated communities. Second, Ordinance 6-02 amended the county zoning code to implement the plan updates in the former ordinance.

THE DEPARTMENT'S REVIEW

In conducting our review, the department found it useful to address issues in two parts: those raised by objection and those identified by DLCD.

Validity of objections

According to OAR 660-025-0140(2), in order for an objection to be valid, it must:

- (a) Be in writing and filed no later than 21 days from the date notice was mailed by the local government;
- (b) Clearly identify an alleged deficiency in the work task;
- (c) Suggest specific revisions that would resolve the objection; and
- (d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

The department received letters of objection from Dale A. Saari of the Central Oregon Coast Board of Realtors and Jim Welsh representing The Eugene Association of Realtors that were timely, and they participated in the local processes. Regarding the objections to the county's action, the objections identified alleged deficiencies and suggested revisions to resolve the objection. The objections are valid.

The department also received a letter of objection from Robert Manseth, president of Indian Forest, Inc. This objection was also timely, and Mr. Manseth demonstrated local participation. Some of the objections do not "clearly identify an alleged deficiency" or "suggest specific revisions that would resolve the objection" and are therefore invalid. All the objections are addressed in detail in the following section of this report.

Issues raised in objections

The two letters of objection from the realtors' associations are nearly identical, and they are considered here as one.

1. Objection. Lane County codified limitations that are not required by statute or administrative rule.

This objection is not sustained.

The realtors' objection states that the county has misapplied the UC rule by adopting maximum commercial and industrial building size requirements outside unincorporated communities. The objectors recognize that the UC rule requires maximum size requirements within unincorporated communities, and they go on to state, "We find no evidence in Oregon Revised Statutes or Oregon Administrative Rules that mandates this over reaching Lane County code..." The objectors suggested that DLCD should remove or remand the "misapplied restrictions on aggregate building sizes." Mr. Manseth similarly objects to the added restrictions.

It is true that no statutory or rule provision requires that a size threshold be applied outside unincorporated communities. The requirement is found in statewide planning Goal 14, which states, "In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services *more intensive than allowed on rural lands...*" (emphasis added). The Land Conservation and Development Commission (LCDC) added this provision in response to a Supreme Court decision (in *1000 Friends v. LCDC* (Curry County)), which interpreted Goal 14 to require that urban uses be contained within urban growth boundaries (UGBs), and, conversely, only rural uses are allowed outside UGBs.

LCDC decided that the measure of "intensity" is building size (see LCDC Order 02-WKTASK-01381 regarding Polk County periodic review). Since the size of most commercial and industrial buildings inside communities are limited (to 4,000 and 10,000 square feet, respectively), and they may be more intensive than such uses outside communities, LCDC reasoned that commercial and industrial zones outside communities must limit the size of buildings to a size smaller than the 4,000 and 10,000 square-foot limits. The county acted appropriately in limiting the size of commercial and industrial buildings outside unincorporated communities to 3,000 and 8,000 square feet, respectively.

2. Objection. The county did not provide adequate opportunity for citizen involvement or proper notification.

This objection is not sustained.

The realtors' letters state that insufficient opportunity to comment on the work task was afforded by the county, especially outside the McKenzie River watershed. The letters also allege that no land owners were individually notified of the proposed changes. The Manseth objection also noted citizen involvement concerns and requested the work task be returned to the county "for true public involvement."

OAR 660-025-0080 "Citizen Involvement" says:

- (1) The local government shall use its acknowledged or otherwise approved citizen involvement program to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government shall publish a notice in a newspaper of general circulation within the community informing citizens about the initiation of the local periodic review.

The local government shall also provide written notice of the initiation of the local periodic review to other persons who, in writing, request such notice.

Lane County planning staff conducted multiple workshops in Rainbow, Walterville, Blue River, Marcola, Leaburg, Upper McKenzie, Florence and Eugene. In addition, individual notice of the work task was sent to property owners in all exception areas in the county. There were three separate meetings in Florence. Required hearings before the planning commission and board of county commissioners were conducted. This department concludes that the county satisfied the periodic review citizen involvement rule.

3. Objections. In addition to the two objections above, the letter from Mr. Manseth makes the following objections:

- The code update takes land for unnecessary setbacks.
- The code update eliminates factories warehouses, freight terminals and warehouse distribution centers. Why, if they are compatible with the area.

These objections are not sustained.

While the letter did not “suggest specific revisions that would resolve the objection,” the clear implication is that the setbacks should be reduced and the deleted uses added back. In both cases, however, the county has used its land-use decision making authority in a manner allowed by the statewide planning goals and statutes. Except in very limited circumstances not relevant here, state requirements do not address setbacks. The county *may* permit the listed industrial uses (subject to size limitations), but it is not *required* to allow them in their industrial zone.

4. Other Issues. The letter from Mr. Manseth listed several additional general points, such as, “The code update further restricts property rights” and “Lane County was not asked by the voters to make these restrictions.” These comments do not satisfy the criteria listed in the previous section of this report for a valid objection.

Issue raised through department review

In addition to the evaluation of objections to the county’s submittal, DLCD conducted an analysis of whether the plan and code amendments comply with statewide planning goals, rules, and statutes. One deficiency was identified.

Ordinance No. 6-02 included a new Lane Code (LC) section 16.291, which provides the standards for the Rural Commercial zone, used inside and outside unincorporated communities. LC 16.291(3)(u) lists the following under “Uses and Development Subject to Approval by the Director”:

Motels or hotels with up to 35 units that meet the following conditions:

- (i) They are located at least 10 miles from the urban growth boundary of any city adjacent to Interstate Highway 5; and
- (ii) They are served by a “community sewer system” that means, “A sewage disposal system with connections to at least 15 permanent

dwelling units, including manufactured homes, within the unincorporated community”.

This use is permitted by the OAR 660-022-0030(5) *inside* unincorporated communities, but LC 16.291 applies outside communities as well. Such uses outside communities would not be “less intensive” than uses inside community boundaries, and would therefore be in violation of Goal 14 (see the response to the objection in subsection 1 of the previous section of this report). It is not clear from the language above whether motels and hotels are permitted only within unincorporated communities. Although there is reference to “within the unincorporated community,” it is part of the definition of “community sewer system” and not a limitation on the use itself.

Because the county has initiated work task 3, which addresses uses in the Rural Commercial zone in the Siuslaw watershed, DLCD review of this provision is continued, with the expectation that the county will update LC 16.291(3)(u) to comply with Goal 14 during that work task adoption. LC 16.291(3)(u) is not approved and the county cannot rely on its adoption should an application be made for a motel or hotel outside an unincorporated community.

OVERALL CONCLUSIONS AND DECISION

Lane County has made appropriate amendments to its comprehensive plan and zoning code to address the requirements of ORS 195.020 and .025, OAR 660-004-0040, and Goals 11 and 14. Regarding compliance with OAR Chapter 660, Division 22 (the Unincorporated Communities Rule), the adopted updates are consistent except that LC 16.291(3)(u) is inconsistent with Goal 14.

All elements of Order No. 01-7-10-5 and Ordinances PA 1173 and 6-02 are approved except LC 16.291(3)(u). Review of LC 16.291(3)(u) is continued.

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MINUTES

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Lane County Planning Commission
Harris Hall - Lane County Courthouse

October 21, 2003
7 p.m.

PRESENT: Mark Herbert, Chris Clemow, Marion Esty, Vincent Martorello, Juanita Kirkham, Steve Dignam, members; Bill Sage Staff;

ABSENT: Jacque Betz,

I. PERIODIC REVIEW: RCP Work Program

Section 1: Rural Industrial Zone - Lane Code 16.292

Section 2: Rural Commercial Zone - Lane Code 16.291

Section 3: RCP Goal 2, Errors or Omission Policy 27

Section 4: Destination Resort Lane Code - Lane Code 16.232

**Section 5: Preliminary Compliance Report - OAR 660-22-030 and
Unincorporated Community Reports - Siuslaw and Long Tom
Watersheds**

Ms. Kirkham called the meeting to order and opened the public hearing.

Jozef Zdzenicki, Taylor Street, OAR 666-030 regarding floor area restrictions, He said 60,000 square feet was beyond small scale scenario. He recommended that the Planning Commission stay with a more restrictive and small square footage in Lane Code.

Mr. Zdzenicki said, regarding Destination Resort Code language, he suggested that the time share part of the language have a distinction that one person could not buy up all the time share properties.

Regarding Policy 27 Mr. Zdzenicki said those items related to errors and omissions should be grouped together with similar problems to expedite the process.

Mr. Zdzenicki said riparian setbacks should have one standard distance to simplify the laws. He noted that there were, currently various distances for different agencies. He said this would create a large amount of confusion and suggested going with the federal distance of 150 feet.

Jay Waldren, 4530 Franklin Boulevard, distributed written material to the Planning Commission. Regarding the Siuslaw and Long Tom watersheds, Mr. Waldren said he was in favor of the wording in the code language that allowed for further hearings for Rural Comprehensive Plan proposals for the Coast Fork and Middle Fork of the Willamette River. He supported the language LC 16.292(3) which said a wrecking yard should not be a public health

hazard and should not have adverse environmental impacts to water quality. He said he supported the original intent of House Bills 2691 and 2614 regarding the distinction between urban and rural uses of abandoned or diminished mill sites. He said wrecking yards, as defined by Lane County, should not be restricted to urban use. He raised concern over support of HB 2614 and its restrictions of industrial development on sites within the Willamette Valley. He said such review should be done by a site-by-site process. He it was crucial for the benefit of his employees to expand his organization.

Mr. Waldren said the Rural Comprehensive Plan had been his biggest stumbling block so far to expanding his organization.

Laurie Segel, 120 West Broadway, spoke on behalf of 1000 Friends of Oregon. She said 1000 Friends supported HB 2691. She went on to site various typos and wording errors in the written version of the plan. She said she looked forward to giving more informed comments that were more than just technicalities.

Ms. Kirkham closed the public hearing.

In response to a question from Mr. Dignam regarding how the siting of a wrecking yard was addressed in Lane Code, Mr. Sage said the text of the amendment had been rewritten to apply to the McKenzie, Siuslaw, and Long Tom Watersheds because those were watersheds that had been through the periodic review process.

The meeting adjourned at 7:45 pm.

(Recorded by Joe Sams)

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MINUTES

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Lane County Planning Commission
Mapleton Elementary School, Mapleton Oregon

November 4, 2003
7 p.m.

PRESENT: Chris Clemow, Mark Herbert, Juanita Kirkham, Jacque Betz, Vincent Martorello,
Steve Dignam, members; Kent Howe, Bill Sage Staff;

ABSENT: Marion Esty

I. APPROVAL OF SEPTEMBER 23, 2003 MINUTES

Mr. Herbert called the meeting to order at 7 pm.

Mr. Dignam, seconded by Mr. Clemow, moved to approve the minutes of September 23, 2003, as submitted. The motion passed 5:0:1 with Ms. Kirkham abstaining.

II. PERIODIC REVIEW: Rural Comprehensive Plan Work Program

Robert Masden, Florence Oregon, said he had been living in the region for 38 years. He raised concern over the rights of landowners and the addition of more government restrictions involving land use. Regarding rural commercial land, Mr. Masden said the Lane County planners should provide reasoning for every restriction in the code. He added that planning commission members and Board of Commissioner members should all state publicly why they voted for each restriction.

Mr. Masden raised concern that the County Planning Director had too much authority over rural commercial lands. He said his rural commercial clients were not being allowed to develop their lands as they wished because of County development restrictions. He opined that the County had broken a contract with rural residents.

Regarding citizen involvement, Mr. Masden stressed the need for more solicitation of public input and opined that public involvement had declined in the past few years.

Mr. Masden said projects turned down by Lane County planners represented a breakdown of communication between the County and its constituents. He was not in favor of going through the hearings official process to appeal the decision of the Planning Director and expressed a preference for having round table discussions between citizens and the Planning Director. He reiterated his opposition to more restrictive land use rules. He commented that applicants with

the same ideas for development were treated by different standards. He reiterated his desire to see more citizen involvement in the process.

Denise Morgell, 16424 Highway 36, raised concern over lack of citizen involvement in the land use planning process. She cited the case of a veterinarian in Blachly treating animals from his home. She said the man had no money to build his practice because of fees and fighting land use restrictions. She added that she had difficulties with Lane County staff that had charged her \$418 to look at four trees on her property. She noted that this was two weeks salary for her. She said she had been intimidated by Lane County staff and added that staff had lost photos of her property showing the trees she had then been charged to inspect. She remarked that there was no sanity in what she was being told by Lane County staff that had said her dwelling was non compliant because of its location on her property. She said she was being told that her manufactured home had to be moved seven feet further back because of fire break distance and remarked that this would put her home over a nearby ledge on the property.

Ms. Morgell raised concern over the Farm Use and Forest Management agreement requiring easements.

County Planning Staff member Bill Sage said a requirement for development in a forest zone was for the resident to acknowledge that farm and forest uses could operate on adjacent sites of land. He stressed that the agreement did not release any property rights.

Ray Morgell, testified that part of the problem was that citizens did not know who to go or talk to when going to the County Courthouse. He remarked that photos and paperwork he had submitted about his property had been lost by County staff. He said he felt that he had no avenues to work with the County since staff had told him that he either had to comply with moving his home to a different location on the property or lose the property. He reiterated his wife's concern over the \$418 charge for the visit from the County worker and remarked that a person driving by the property could have done the same amount of assessment that was done. He said his family had spent approximately \$1,500 so far on county fees and reiterated that this was more than they could afford.

Ms. Kirkham urged the Morgells to contact their County Commissioner about their stance on land use issues.

Ms. Betz and Ms. Kirkham urged the Morgells to call them if they had further problems communicating with Lane County staff.

Mr. Herbert stressed that the commission was there to listen to the concerns of citizens. He urged all present to state their concerns to the Planning Commission and the Board of County Commissioners.

Planning Director Kent Howe explained that fees were charged for notifying residents of firebreak regulations as well as fees for a return visit to see that the firebreak regulations were complied with.

In response to a question from Mr. Dignam regarding outright permitted uses on rural commercial lands, Mr. Sage said there were some outright permitted uses but acknowledged that

there were few of them. He said the site review process had been inserted in commercial and industrial zones so it appeared that there were no outright permitted uses.

Mr. Dignam said he was an advocate of private property rights and stressed that his voting record would support that. He noted that commissioners were required to follow state laws and sometimes that was the reasoning behind a particular vote.

Mr. Herbert closed the public hearing.

Ms. Kirkham reported that she and Bill Sage had received a letter from the Port of Siuslaw regarding the possibility of making RV parks and campgrounds permitted uses on industrial land. She distributed copies to the rest of the commission. She noted that the Port would also submit an official letter to the County.

(Recorded by Joe Sams)

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MINUTES

Lane County Planning Commission
Harris Hall - Lane County Courthouse

December 2, 2003
5:30 pm.

PRESENT: Chris Clemow, Jacque Betz, Mark Herbert, Juanita Kirkham, Vincent Martorello, Steve Dignam, members; Bill Sage, Kent Howe, Staff

ABSENT: Marion Esty

Mr. Herbert convened the meeting at 5:30 pm.

I. WORK SESSION:

- RCP Policy 27: Errors or Omission
- Rural Commercial Zone LC 16.291
- OAR Compliance Report - Rural Community Plans

Mr. Sage said the Planning Commission packet contained all the data regarding Errors and Omission. He called for feedback from the commission on the staff proposed RCP Goal Two, Policy 27.

In response to a question from Ms. Betz regarding whether there would be refunds of fees if applications were refused, Mr. Sage said a pre-application meeting, with the standard \$190 fee, would be held for previewing applications. He said staff would indicate at that meeting whether they thought the application should move forward and would leave the choice up to the applicant as to whether to submit for processing. He said the fee would not be refunded if an Errors or Omission application was accepted for processing.

In response to a question from Ms. Kirkham regarding cluster subdivisions, Mr. Sage stated the only change that was proposed in this ordinance draft was the addition of Policy 27, Errors or Omission as presented in the documents distributed to the planning commission.

Mr. Sage said there were three specific plan amendments that could not be processed under Errors or Omission:

1. Taking of a Committed Lands Exception
2. Nonresource Lands Application
3. Marginal Lands Application

In response to a question from Ms. Kirkham regarding how the new policy would be publicized to land owners, Mr. Sage said consultants and special interest groups would be informed about the change and staff would make citizens who came into the LMD customer service counter aware of the plan amendment option. He noted that the information would also be available on the County website.

In response to a question from Ms. Kirkham regarding whether staff would be able to meet the 45-day timeline for review and acceptance of an application, Mr. Sage said there was enough staff to meet that timeline.

In response to a question from Mr. Herbert regarding whether there was a way to make special groups aware of the changes, Mr. Sage said the County already provided notice to special groups. He said staff would distribute copies of the adopted ordinance to consultants and special interest groups.

Mr. Clemow , seconded by Ms. Kirkham, moved to recommend approval of Ordinance PA 1192 by the Board of County Commissioners. The motion passed unanimously.

Regarding Commercial Lands, Mr. Sage said there needed to be amendments to the text of LC 16.291(3)(u) addressing community sewer system requirements for hotels and motels within unincorporated rural communities. He said the item would have a first reading on January 7, and would be scheduled by the Board of Commissioners for public hearing and deliberations on January 21, 2004.

Mr. Sage said staff had received significant citizen input during citizen information meetings on square footage standards for commercial development in a rural area. Citizens wanted to increase the limit for development outside rural community boundaries from 3,000 to closer to 4,000 square feet. He said there had been some interest shown among the Board of Commissioners for revisiting that limit.

In response to a question from Mr. Dignam regarding the reasoning behind the 3,000 square foot limit, Mr. Herbert said there had been concern voiced from the McKenzie watershed citizens over the rural nature of incorporated areas and the resulting number was a compromise with no real science behind it.

In response to a question from Mr. Dignam regarding whether any changes made would apply to only the Siuslaw and Long Tom watersheds or would apply to the McKenzie Watershed as well, Mr. Sage said the commission could make a recommendation for the change to apply outside of the McKenzie Watershed.

There was general discussion of 3,000 versus 4,000 square foot limits. Ms. Kirkham questioned whether parcels could hold a 4,000 square foot, single story building and still meet existing setback requirements.

Mr. Herbert said the needs from watershed to watershed were different and needed to be handled on a case-by-case basis. He said, based on the input from the watershed citizens, he was inclined to be less rather than more restrictive.

In response to a comment from Mr. Martorello regarding differentiating between 3,000 and 4,000 square feet, Mr. Herbert said there had been no real citizen input, other than from the McKenzie watershed in 1999-2000, over keeping the limit at 3,000 square feet.

Ms. Kirkham reiterated that there were no parcels big enough to put a 4,000 square foot building on. She opined that this might be the reason that there had been no testimony on the issue.

Mr. Dignam, seconded by Ms. Betz, moved to institute a 4,000 square foot floor area on commercial properties outside of rural unincorporated communities in the Long Tom and Siuslaw watersheds.

The motion resulted in a tie vote of 3 to 3, with Mr. Herbert, Ms. Betz, and Mr. Dignam voting in favor.

Mr. Sage said he could notify the Board of Commissioners that there was a split vote on the issue.

In response to a question from Mr. Dignam regarding square foot limitations on motels and whether it was realistic to allow 35 units, Mr. Sage said there was currently no rural area in Lane County that could allow a Hotel or Motel to be constructed due to the requirement for an existing community sewer system to serve the use. He said the State never intended those types of facilities, motels or hotels, to be subject to the commercial floor area standards. He stated that the text of LC 16.291(4)(u) was also being amended to clarify the exception. He noted that the code did provide for "fishing or hunting overnight accommodations" in LC 16.291(3)(z) allowing 15 "guest rooms" in a single structure that was subject to the floor area limitations.

There was discussion regarding the OAR Compliance Report. Mr. Sage said it could not be forwarded to the Land Conservation and Development Commission (LCDC) until the maps for the 17 rural communities in the Siuslaw and Long Tom Watersheds were completed. He said the Official Plan and Official Zoning Plot maps for the rural communities in the two watersheds would be presented to the Planning Commission at the December 16th, meeting.

Mr. Dignam, seconded by Mr. Martorello, moved to support the housekeeping amendments to Lane Code 16.291 Rural Commercial Zone (RC, RCP) as presented by staff. The motion passed unanimously.

The meeting adjourned at 7 pm.

(Recorded by Joe Sams)

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Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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REC'D DEC 18 2003



December 17, 2003

Kent Howe
Lane County Planning Director
125 East 8th Avenue
Eugene, Oregon 97401

Re: Periodic Review Task 1 Remand (Order 001582)

Dear Kent:

On October 31, 2002, DLCD issued Order 001431 approving most of Lane County's Periodic Review Task 1. The only provision not approved was Lane Code (LC) section 16.291(u)(3) regarding rural motels and hotels, for which the department continued review pending completion of a subsequent task on your work program, which will correct the deficiency. However, the Oregon Legislature adopted Senate Bill 920 in 2003. Section 8 of the bill mandates that the Department of Land Conservation and Development make a decision on any task submitted by a local government before July 1, 2003 by December 31, 2003 or the task will become approved, unless there was an objection. Although there were objections to the county's adoption of this task, the objections did not address LC 16.291(u)(3) and the appeal of Order 001431 has been concluded.

In order to ensure that LC 16.291(u)(3) does not become approved, this order remands that portion of Task 1 relating to hotels and motels permitted in Rural Commercial zone, based on the findings contained in the report accompanying Order 001431 (relevant excerpt attached), pursuant to OAR 660-025-150(1)(b). The county shall amend the Lane Code in response to this remand by March 31, 2004.

The county may appeal the department's order to Land Conservation and Development Commission. Appeals must be in writing and received by the department's office in Salem by 5:00 p.m. on January 5, 2005. Appeals to the commission are governed by OAR 660-025-0150(3).

If you have any questions please feel free to contact me at (503) 373-0050 extension 239.

Yours truly,

Rob Hallyburton
Community Services Division Manager

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c: Larry French, Periodic Review Specialist
Marguerite Nabeta, Regional Representative (email)
Doug White, Community Services Specialist (email)
State Periodic Review Assistance Team (e-mail)



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October 10, 2003



Marion County Planning
 Attention: Brandon Reich, Associate Planner
 P.O. Box 14500
 Salem, OR 97309

Re: Periodic Review Task 5 – Planning and Zoning of Rural Exception Areas

Dear Brandon:

Thank you for the opportunity to comment on a September 5, 2003, draft Rural Commercial, Rural Industrial and Public Use Zones in response to the Goal 14 requirements specified under Work Task 5 (Element 2) of the county's periodic review work program. The department feels that the two meetings we have had with county planning staff to discuss our concerns with the draft ordinances have been very beneficial. We will continue to be available to meet with county staff to discuss and help address our concerns.

Rural Commercial Zone: The Department of Land Conservation and Development (DLCD) have concerns that many of the uses permitted in the RC zone do not comply with statewide Goal 14. The county has not justified that application of a 3,800 square-foot floor area standard complies with Goal 14 and the 1986 Supreme Court decision interpreting that goal, in *1000 Friends of Oregon v. LCDC* (Curry County). The goal states that: "In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14..." Most commercial uses in rural unincorporated communities are limited to 4,000 square feet.

The difference of only 200 square feet of floor area as proposed by the county is not "less intensive" than the 4,000 square foot standard required inside rural communities, and does not provide any real difference between rural uses and urban uses as required under Goal 14. DLCD and the Commission have approved rural commercial zones in other counties as complying with Goal 14 that apply a 3,500, 3,000 or 2,500 square foot maximum building size provision for new commercial uses. We believe that a distinction of at least 500 square feet between the floor area requirement for new commercial uses located inside rural unincorporated communities (i.e., 4,000 square feet) and the floor area standard for rural commercial uses located outside UC's (at least 3,500 square feet) is required to satisfy Goal 14.

DLCD recommends that paragraph (O) of subsection XXX.030 and paragraphs (A) and (B) of subsection XXX.050 of the Rural Commercial Zone be revised to read 3,500 square feet instead of 3,800 square feet.

Rural Industrial Zone: For the same reasons discussed above regarding the standard for commercial building sizes, we feel the proposed 38,000 square foot standard for industrial uses is not "less intensive" than the 40,000 square foot requirement for industrial uses in rural communities.

DLCD recommends that paragraph (R) of section XXX.040 and paragraphs (A) and (B) of section XXX.060 of the Rural Industrial Zone be revised to read 35,000 square feet instead of 38,000 square feet.

Regarding the building size exemptions for resource-related industrial uses in section XXX.080, DLCD is concerned the exemption is too narrow. DLCD has approved rural industrial zones with no building size limitation where the industrial use is "involved in the primary processing of raw materials produced in rural areas" as complying with Goal 14. We believe this to be a somewhat broader exemption than the one being proposed by the county, which is the standard applied to "commercial activities in conjunction with farm use..." under ORS 215.283(2)(a). However, we will not object if the county believes that the proposed resource-related exemption standard is appropriate.

The draft Rural Industrial Zone includes the following permitted use (XXX.020(V)):

"New uses, sited on an abandoned or diminished industrial mill site that was engaged in the processing or manufacturing of wood products, provided the uses will be located only on the portion of the mill site that was zoned for industrial uses on October 28, 1994."

The draft Rural Industrial Zone appears more restrictive than state law with respect to these mill sites. Under the draft section "Scale of Industrial Uses," all permitted or conditional uses are subject to a building size limitation, including the above listed permitted use. HB 2614 allows an abandoned or diminished mill site meeting the statutory definition to be zoned for any level of industrial use. The "October 24, 1994," date was derived from a LCDC temporary rule where previously was included in this definition. However, under permanent rulemaking, and applied outside unincorporated communities, this date is no longer applicable.

We recommend that the permitted use be revised to read:

"V. New industrial uses, sited on an abandoned or diminished mill site, which means a mill, plant or other facility engaged in the processing or manufacturing of wood products, including sawmills and facilities for the production of plywood, veneer, hardboard, panel products, pulp and paper, that: (a) was closed after January 1, 1980 or was operating at less than 25 percent capacity since January 1, 2003; and (b) contains or contained permanent buildings used in the production or manufacturing of wood products."

In addition, we recommend that the draft section "Scale of Industrial Uses" should not apply to this particular permitted use.

Public Use Zone: The concern discussed above regarding the 3,800 and 38,000 square foot standards being proposed in the draft Rural Commercial and Rural Industrial Zones applies to the Public Zone. The 3,800 and 38,000 square foot standards in the Public Use Zone should be revised to 3,500 and 35,000 square feet, respectively.

We believe that there are several other problems with the draft Public Use Zone.

Scale of Uses: Under the subsection for "Scale of Uses," there is a paragraph (A) for Commercial Uses and a paragraph (B) for Industrial Uses. Both paragraphs provide that all "new permitted and conditional uses" may be established up to a maximum floor area. We believe that there are only three listed conditional uses (see below) that should be subject to a floor area standard in order to comply with Goal 14. The zone, as drafted, appears to apply the floor area standards to "all" permitted and conditional uses. We also believe that most of the permitted and conditional uses are appropriate to include in the zone (e.g., emergency service buildings, schools, etc) without a size limitation. **Note:** Essentially the same situation exists in the draft Rural Commercial and Rural Industrial Zones where a building size limitation applies to all permitted and conditional uses.

Conditional Uses: We believe that the following conditional uses (section 171.030) would authorize urban uses and activities and therefore, the Public Use Zone as drafted requires an exception to Goal 14:

- (A) Airport related commercial and industrial uses;
- (B) Auditorium, ballpark, exposition, fairground, museum, race tracks, stadium, stock show and zoo;
- (E) Golf course, public parks and playgrounds, recreational resorts and retreats, and related camping and retail sales;¹

The conditional uses listed above are a mixture of large-scale commercial, industrial, airport related and public and private buildings and activities that could generate large volumes of traffic and demand for urban services.

We recognize that some of the uses may already exist and therefore, are appropriate to list. However, this can create an urban zone and if applied outside an urban growth boundary would require an exception to Goal 14. It seems that the county has several strategies to address existing uses. First, for commercial uses listed under (A) and (C) that exist on the effective date of this ordinance, the zone already provides that the existing floor area may expand up to either a specified floor area or an additional 30 percent, whichever is greater, *without an exception to Goal 14*. Again, we believe the specified floor area for commercial uses needs to be 3,500 square feet, instead of 3,800. Second, the county may be able to justify a developed or committed exception to Goal 14 for these existing urban uses. For those areas where an exception to Goal 14 has not been taken, we understand that the county staff is considering establishing an additional Public Use Zone that would allow only rural uses consistent with Goal 14. Another strategy would be to delete the urban uses from the zone. We are available to further discuss these options with you in more detail.

¹ DLCD believes it's appropriate not to apply a size limitation to a building or buildings related golf courses, public parks, playgrounds and camping. However, we believe that recreational resorts and retreats, and retail sales require either an exception to Goal 14 or a building size limitation of 3,500 square feet, or a combination of both to satisfy Goal 14.

Large-Scale, Airport Related Use: The draft Public Use Zone defines "large-scale, airport related uses" as uses permitted in a building or buildings with over 38,000 square feet of floor area (section 171.140). The draft the zone provides that the floor area of any "airport related commercial or industrial use" may develop or expand to exceed 38,000 square feet if the development will not exceed the existing local sewer or on-site sewer capacity and is consistent with the transportation facility serving the site.

We believe that all new or expanded uses, regardless of their size, must adhere to standards requiring adequate sewer capacity and transportation facilities. However, alone these standards do not assure that only "rural" uses are authorized outside urban growth and unincorporated community boundaries consistent with Goal 14. This section is also confusing because "large-scale, airport related" is only defined as uses permitted in a building or buildings over 38,000 square feet of floor area. The size of the building or buildings does not define uses that are "airport-related."

Public Use Zone Applied within Unincorporated Communities: We understand that the zone applies to lands within unincorporated communities and that the county has not applied standards for commercial and industrial uses under OAR 660, Division 022. The recommended changes below resolve this issue as well.

DLCD recommends the following changes to the Public Use Zone:

1. Revise section 171.120, Scale of Uses, to read as follows:

(A) Commercial Uses:

- (1) New commercial uses may be established in a building or buildings up to 3,500 square feet of floor area, up to 4,000 square feet of floor area within a rural community or rural service center, and up to 8,000 square feet of floor area within an urban unincorporated community.
- (2) Lawfully established commercial uses existing as of ____ (insert date of this ordinance) may be expanded as follows:
 - (a) Up to 3,500 square feet of floor area outside an unincorporated community, or an additional 30% of the floor area that existed on ____ (insert date of this ordinance), whichever is greater.
 - (b) Up to 4,000 square feet of floor area within a rural community or rural service center, or an additional 30% of the floor area that existed on ____ (insert date of this ordinance), whichever is greater.
 - (c) Up to 8,000 square feet of floor area within an urban unincorporated community, or an additional 30% of the floor area that existed on ____ (insert date of this ordinance), whichever is greater.

(B) Industrial Uses:

- (1) New industrial uses may be established in a building or buildings up to 35,000 square feet of floor area, up to 40,000 square feet of floor area within a rural community or rural service center, and up to 8,000 square feet of floor area within an urban unincorporated community.

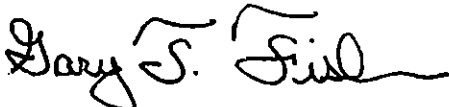
- (2) Lawfully established industrial uses existing as of ____ (insert date of this ordinance) may be expanded as follows:
- (a) Up to 35,000 square feet of floor area outside an unincorporated community, or an additional 30% of the floor area that existed on ____ (insert date of this ordinance), whichever is greater.
 - (b) Up to 40,000 square feet of floor area within a rural community or rural service center, or an additional 30% of the floor area that existed on ____ (insert date of this ordinance), whichever is greater.
 - (c) Up to 60,000 square feet of floor area within an urban unincorporated community, or an additional 30% of the floor area that existed on ____ (insert date of this ordinance), whichever is greater.
2. Revise section 171.130(C) to read: "Lawfully established commercial **and industrial** uses that existed prior to zoning or established...."
3. Revise the Public Use Zone to apply the development standards in paragraph (A) and (B) of section 171.140 to all permitted and conditional uses.

Other Comments: We were not provided with draft amendments to the Marion County Comprehensive Plan regarding rural commercial and rural industrial areas. Therefore, DLCD has not reviewed the county's comprehensive plan to determine whether the new zoning provisions are consistent with the plan. We understand that county planning staff has not yet performed this analysis as part of these changes to the zoning ordinance. We believe the county needs to complete the analysis and make any necessary changes to the plan as part of this work task.

Finally, we were not provided with draft amendments to the ID Interchange District. Section 150.040(A) of the ID Zone permits commercial and industrial uses outside unincorporated communities without any building size limitation. Therefore, it too needs to be amended to comply with Goal 14.

Please enter this letter into the record of these proceedings. Feel free to contact me at (503) 373-0050, extension 254, or Doug White at (503) 373-0050, extension 240, if you have any questions.

Yours truly,



Gary T. Fish
Willamette Valley Regional Representative

GF/dw/rh

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cc: Rob Hallyburton, DLCD Community Services Division Manager
Doug White, DLCD Community Services Specialist
Larry French, DLCD