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## SUPPLEMENTAL INFORMATION

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**AGENDA DATE:** April 8, 2009  
**MEMO DATE:** April 2, 2009  
**TO:** LANE COUNTY BOARD OF COMMISSIONERS  
**FROM:** Department of Public Works / Land Management Division  
**RE:** Follow up / response to 3/30/09 letter from Cindy Land  
**PRESENTED BY:** Keir Miller, Associate Planner  
**ORIGINAL AGENDA TITLE:** ORDER NO.09-3-31-4 /IN THE MATTER OF  
AMENDING CHAPTER 4 OF LANE MANUAL TO  
ESTABLISH A FIREWISE INCENTIVES PROGRAM  
(LM 4.300)

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### I. BACKGROUND

On March 31, 2009, LMD presented to the Board proposed amendments to Lane Manual that would articulate specific details of the County's Firewise Incentive Program.

At the March 31 meeting, the Board requested that staff review and respond to issues raised regarding Lane Manual provisions in a letter dated March 30, 2009, a Ms. Cindy Land, Ms. Land's letter is included as Attachment "C" to this memo.

### II. ANALYSIS

Ms. Land's comments are generally organized around the proposed Lane Manual sections 4.300 – 4.320. Staff has reviewed the comments and offers the following responses:

#### **4.300 Purpose** (Issue: bureaucracy and unwarranted searches)

The county is in the process of hiring 4 positions to administer these federal dollars. Many or all of the hires are likely to come from the over 20 persons laid-off from LMD earlier in the year. As this is a new program using funding not previously available, new personnel are necessary.

No unwarranted private property searches will take place under the program. The program will involve county staff going onto private property in two circumstances. First, staff will conduct door-to-door outreach with residents to provide Firewise educational materials, to explain the county program and to inform residents of the financial incentives the county has to offer should they be interested in pursuing any voluntary site-specific actions to mitigate their wildfire risk. In these situations staff will be conscious and respectful of the privacy expectations of residents. Staff will walk from their vehicle to the front door of the residence in the most direct route possible. Staff will not walk

around residences without permission from property owners and at all times staff will respect closed gates.

Secondly, only in instances when residents have signed up to participate in the program and following the contractor or resident advising the county of a project being completed, staff would go to the property to inspect the project. This is necessary to insure that work is actually and satisfactorily completed. As part of the application process to participate in the program, residents will provide a signed authorization granting the county access the property for these necessary inspections.

To the extent that is practical the purpose section (4.300) has been modified to clarify that this is a voluntary program. The revised manual language is included as Attachment "B".

#### **4.305 Financial Incentives (Issue: incentivizes density)**

As proposed, this program would provide that any person or entity may receive building permit fee waivers for up to two residential structures per year, only where such buildings are otherwise allowed under the current land use system. The construction, while necessarily focusing on fire prevention due to the federal funding source, in some ways (windows, doors, roofing, siding, etc.) will promote more energy efficient design and construction than would otherwise be required.

As allocated by the Board under Order No. 09-2-18-5, only 21% annual program funding is currently slated for this category. 45% of the program funding would be provided for landscaping improvements and 34% would be provided for structural improvements to existing dwellings. Because this is a new program, some incentives may turn out to be more or less popular than what has been planned, and staff does intend to monitor funding and report back to the Board after the 3rd quarter of this year to report on program utilization. It may be that building permits should not be subsidized beyond \$3500-4000, and more money used towards roofing or windows, etc. The items and amounts currently designed can certainly be adjusted or modified as needed.

Commissioner Handy requested that some type of project weighting be developed so that retrofit projects would receive a higher priority for funding than new development. It was unclear to staff if this was the desire of the majority of the Board. However, under the currently proposed allocation percentages described above, this is precisely what would occur. As designed, nearly 80% of funding would be available for landscaping upgrades and structural retrofits and the remainder would be available for permit fee waivers.

Finally, from a staff-level natural hazards planning perspective, it would be easiest to simply prohibit all development in at risk areas such as floodplains, tsunami inundation zones, steep or erosion prone hillsides, the wildland urban interface, etc. However, it is a fact that current land use laws allow these areas to be developed to some degree or another. There is high demand for rural properties with hilltop, coastal and river views - and for better or worse, recent trends such as Measure 37 and 49 have further enabled possible development into these sensitive areas. It is inevitable that some development will continue to occur in sensitive areas. This program provides the county an excellent

and non-regulatory opportunity to help guide this development in an intelligent and sustainable manner.

#### **4.310 Eligibility Determinations (issue: site inspections)**

This issue is discussed under section 4.305, above.

#### **4.315 Appeals (issue: costs to residents)**

Appeals may occur either where the county finds a property not eligible, or finds a project not adequately completed. While citizens must be allowed such appeals, where they are not successful the \$100 deposit (consistent with LMD fine appeals and minimal for most land owners) should be retained to help recover staff costs incurred in processing the appeal. If the appeal is then made to the Board, the deposit of \$1000 is consistent with similar appeals to the Board from land use decisions. Again, if the appellant prevails, the money is returned. The Land Management Division is fee supported. Its fee schedule is supported by a recent independent analysis, which documents that the current fees are justified and necessary to recoup the true costs of staff labor to process applications, appeals, etc.

#### **4.320 Authority to Access Properties (issue: policies enable unwarranted searches)**

The language used here is consistent with what other jurisdictions use. The proposed Lane Manual language is "to the full extent permitted by law...shall be authorized to make entry." Similar language is used in many municipal codes, mostly in the building enforcement arena. NYC uses [C26-120.1] 27-205, "shall have authority to enter." Portland says, 29.60.020, "may, in the performance of his duties and to the full extent permitted by law, enter." Clackamas County, 9.01.050, "may enter the building." Eugene, 8.005(15)(g) "may enter a building or premises," and 6.090(2) "shall have the right at reasonable times to enter into or upon property in accordance with law." Various other iterations likely exist, and may differ even within a given Code. Counsel is most comfortable with the language proposed, but some other combination from the selected jurisdictions could also work well.

### **III. RECOMMENDATION**

Given the clarifications provided above and the modifications made to the revised Lane Manual provisions, which clarify and reinforce the voluntary nature of the county's Firewise Incentive program, staff recommends that Board adopt Order No. 09-3-31-4.

### **IV. ATTACHMENTS**

- A. Order No. 09-3-31-4
- B. Proposed Amendments to Lane Manual 4.300-4.325 (Revised)
- C. March 30, 2009, letter from Cindy Land

## FIREWISE INCENTIVES PROGRAM

### 4.300 Purpose.

The purpose of this voluntary program is to institute specific incentives, including building permit fee waivers and grant funding opportunities, for targeted residential construction and landscaping improvements that qualify under Title III, Section 601 of Public Law 110-343 - The Emergency Economic Stabilization Act of 2008. These provisions establish and define allowable incentives, and the authority of county staff to conduct fire safety property assessments to determine program eligibility and to confirm that requirements of the program have been satisfied. Participation in this program shall be voluntary.

### 4.305 Financial Incentives.

In an effort to reduce the catastrophic loss of life, property and natural resources from a wildland urban interface disaster Lane County promotes home design, construction, landscaping and maintenance activities that follow the national Firewise Communities program guidelines. To this end, the following incentives are available to qualifying county homeowners within Lane County and outside of the Urban Growth Boundary of an incorporated city, to the extent consistent with LM 4.310:

(1) **Building Permit Fee Waivers.** Building permit fees may be waived for construction of new habitable dwellings and habitable accessory structures (guest homes) that meet applicable standards found in the 2009 International Urban-Wildland Interface Code. Additionally, improvements to existing residential structures that qualify under LM 4.305(2) may also qualify for a permit fee waiver in those instances where permits are required. These waivers shall cover 100% of building permit fees up to a maximum amount of \$5,000. Fees for planning actions, septic permits, and other approvals separate from the building permit are not covered by this waiver. The county may require a deposit for these permits not to exceed the lesser of either 25% of the permit fee, or \$1,000. The purpose of such deposits is to ensure that applicants bring projects to a satisfactory conclusion while their eligible funds are being held in abeyance from other projects. If a project is not completed in a timely manner this deposit will be retained only to the extent necessary to compensate Lane County for costs incurred in review of the project. Deposits will be refunded in full upon the completion of all work required on the project, if done within 1 year of eligibility being determined and approved.

(2) **Building Improvement Incentives.** Financial incentives to pay licensed contractors and landscapers are available to eligible County homeowners who satisfactorily complete the following types of building improvements:

Improvement	Available Financial Incentive
(a) Roof Covering (Shake to Class A).	80% of construction cost up to \$4,000 maximum, if a defensible space exists or is developed, consistent with (3)(a), below.
(b) Fire Resistant Glazing for Windows, Skylights and Other Exterior Glass Applications.	80% of construction cost up to \$1,500 maximum, if a defensible space exists or is developed, consistent with (3)(a), below.
(c) Exterior Doors.	80% of construction cost up to \$300 maximum, if a defensible space exists or is developed, consistent with (3)(a), below.
(d) Spark Arrestor Installation.	\$100
(e) Vent Protection.	\$100

(3) **Landscaping Improvements.** Financial incentives to complete the following types of landscaping improvements are available as follows:

Improvement	Available Financial Incentive
(a) Defensible Space Development.	\$500 (base) and up to \$1,000 when warranted by specific site conditions.
(b) Driveway Access.	\$200 when warranted by site conditions and performed in conjunction with (3)(a), above.
(c) Fire Resistant Plants & Hardscaping.	\$300, maximum, in conjunction with (3)(a), above.
(d) Defensible Space Irrigation System.	25% of installation and system costs up to \$500, in conjunction with (3)(a), above.

(4) Applicants pursuing incentives provided for in LM 4.305 (1)-(3) must address specific qualifying standards and criteria as the Public Works Director may reasonably require. These standards and criteria are set forth on the Lane County Firewise Incentives Grant Application form. This application must be completed by the applicant or his or her authorized agent and submitted to the Land Management Division prior to the start of any project where county Firewise Incentive Program funds will be sought.

(5) No person, entity, or affiliation shall be eligible for Firewise financial incentives for more than 2 residences annually.

#### **4.310 Eligibility Determinations.**

The LMD Manager shall inspect properties to determine eligibility for the incentives provided for in LM 4.305 (1)-(3) under the authority provided in LM 4.320. These determinations will be based upon a review of significant risk factors including, but not limited to slope, aspect, surrounding vegetative fuel type, property access, and roof composition. The Manager shall also make inspection to determine that all conditions of program participation have been satisfactorily completed.

#### **4.315 Appeals.**

In accordance with LM 4.310, the LMD Manager shall determine program eligibility and determine when program requirements have been satisfied. Any adverse determination may be appealed by the homeowner, as provided herein.

(1) **Public Works Director Review.** Homeowner applicants may appeal any adverse determination to the Public Works Director. The appeal shall be in writing, in substantially the form required by the Department, be submitted within 14 days of the action complained of, and must include all information necessary to fully complete the form. The Land Management Division shall charge a fee of \$100 as cost for the appeal, but said fee shall be refunded to the applicant in the event that the appeal is upheld. Within 60 days from the date that an appeal is filed, the Public Works Director shall review the appeal and provide written notification of his or her final decision to the applicant.

(2) **Board Review.** In the event that the applicant is not satisfied with the decision of the Public Works Director, further appeal may be made to the Board of Commissioners as follows:

(a) Requests for Board consideration must be submitted to Land Management Division on a form provided by the Division not later than 14 days from the date of the decision of the Public Works Director.

(b) Within 60 days of receiving a request for Board consideration the Board shall determine if they will elect to review the appeal. The decision to review or not to review shall be within the discretion of the Board. In determining whether or not to review the appeal the Board shall use the decision criteria provided for in Lane Code 14.600 (3)(a)-(d) with the following exceptions:

(i) The term 'Planning Director' shall mean the LMD Manager.

(ii) The term 'Hearings Official' shall mean the Public Works Director.

(c) The Land Management Division shall charge a fee of \$1,000, all of which shall be refunded if the applicant prevails. If the Board elects not to review the matter \$750 of the \$1,000 appeal fee shall be returned to the applicant.

(d) The conduct of Board's review shall be performed substantially as provided for in Lane Code 14.400(7)-(10) with the following exceptions:

(i) The term 'Approval Authority' shall mean the Lane County Board of County Commissioners.

(ii) The term 'previous Approval Authority' shall mean the Lane County Public Works Director.

(iii) The term 'Director' shall mean the LMD Manager.

(iv) Lane Code 14.400(9)(b) shall not be applicable.

(e) All decisions made by the Board of Commissioners pursuant to LM 4.315(2) shall be final.

#### **4.320 Authority to Access Properties.**

To the full extent permitted by law, the Public Works Director shall be authorized to make entry upon properties for the purposes of evaluating the exterior of residential structures and surrounding landscaping to assess the potential threat of wildfire to those properties, to determine potential eligibility for funding pursuant to LM 4.310, and to inspect and certify that requirements of the Lane County Firewise Incentive Program have been satisfactorily completed.

#### **4.325 Conflicts of Interest.**

No County personnel shall evaluate their own property or the property of a relative for eligibility under this program. "Relative" means: spouse, domestic partner, grandparent, step grandparent, grandchild, parent, stepparent, child, brother, sister, step sibling, aunt, uncle, niece, nephew or first cousin.

**March 30, 2009**

**Commissioner Faye Stewart  
Lane County Board of County Commissioners  
125 E. 8<sup>th</sup> Ave.  
Eugene, OR 97401**

**Dear Commissioner,**

**The Firewise materials were posted this morning for the Meeting Agenda on Tuesday, March 31, 2009. The Board of Commissioners should NOT ADOPT the amendments as presented for LC Chapter 4 for the reasons listed below. This 'voluntary' program creates unrestricted county staff bureaucracy with unwarranted private property searches, punitive and discriminatory appeal fees and incentivizes developers to build in sensitive forestland.**

**(Suggested changes are crossed-out.)**

**4.30 Purpose.** "The purpose of this program....., these provisions establish and define allowable incentives, and the authority of county staff to conduct fire safety property assessments to determine program eligibility, ~~and to confirm(ing)~~ that requirements of the program have been satisfied."

**4.30 should be changed to avoid creating a county staff bureaucracy with unwarranted private property searches.**

**4.305. Financial Incentives. (1) " Building Permit Waivers.** ~~Building permit fees may be waived for construction of new habitable dwellings and habitable accessory structures (guest homes) that meet applicable standards found in the 2003 International Urban-Wildland Interface Code."~~ **Additionally, improvements to existing residential structures....."**

**4.305 should eliminate the FREE building permits for developers as it encourages the invasion of F-1 & F-2 forestland by incentivizing urban sprawl outside the UGB. Forestland does not have the infrastructure for development, the county does not have funding to provide it and free building permits based on outdated 2003 International Urban-Wildland Interface Building codes will have catastrophic unintended consequences. (There are pages of changes to 2003's code.) Additional density in forestland is a very bad idea, regardless of the short-term local construction boost.**

**4.310. Eligibility Determinations.** "The LMD Manager shall inspect.....Site inspections shall be conducted in the likely at risk areas ~~as determined by Lane County of the Oregon Dept. of Forestry or~~ at the request of interested property owners in rural Lane County.

**Firewise is a voluntary program (?) and participation should be implemented by the property owner and overseen by the county. Not forced by county staff that could be very intrusive on private property. This effectively authorizes an unwarranted search looking for a 'cause'.**

4.315. Appeals. "(1) Public Works Review. Homeowner applicants.....The Land Management Division shall charge a ~~fee~~ deposit of \$100 ~~as cost for the appeal, but said fee shall be refunded to the applicant in the event that the appeal is upheld.~~ which will be refunded after the review regardless of the determination.

**Land Management should not have a revenue-generation from decisions that may or may not be correct. Conflict of interest.**

4.315. Appeals. "(2) Board Review. (d) .....The Land Management Division shall charge a ~~fee~~ deposit of \$200, ~~\$1000~~ all of which shall be refunded if the applicant prevails. If the Board elects not to review the matter, ~~\$750 of the \$1,000 appeal fee shall be refunded (all the deposit)~~ shall be returned to the applicant."

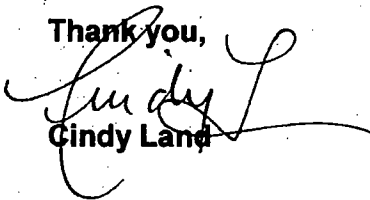
**Every citizen should have the ability to have a county staff decision reviewed at no cost by his elected representatives.**

4.320. Authority to Access Properties. The Public Works Director shall be authorized to enter upon properties at the request of interested property owners in rural Lane County ~~To the full extent permitted by law, the Public Works Director shall be authorized to make entry upon properties~~ for the purposes of evaluating the exterior of residential structures and surrounding landscaping to assess the potential threat of wildfire to that property, to determine potential eligibility for funding pursuant to LM 4.210, and for applicants to inspect and certify that requirements of the Lane County Firewise Incentive Program have been satisfactorily complete prior to reimbursement of the financial incentive.

**County Public Works and Land Management Divisions should not be authorized by the county code to enter property unless at the request of the property owner. Determining "potential" eligibility, "in likely risk areas", "as determined by Lane County or Oregon Dept. of Forestry" is unwarranted search and should not be included in any LC rules.**

**The Firewise Community program can be implemented in Lane County to achieve the County's Strategic Objectives D5, efficiently use Title III funds and the 2008-2010 Strategic Goal No. 1 with a voluntary Firewise program where incentives provide the positive change for Lane County residents & property owners.**

Thank you,

  
Cindy Lane