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**LANE COUNTY LAND USE TASK FORCE REPORT**

**1/27/10 GOAL ONE COALITION PROPOSAL REGARDING MARGINAL LANDS**

The author of this proposal is Jim Just of Goal One Coalition, a Lane County Land Use Task Force (LCLUTF) member. The original 1/27/10 proposal was modified by the author on 7/1/10 prior to consideration by the LCLUTF, and again during the 7/7/10 meeting in response to concerns raised by LCLUTF member Steve Cornacchia, with no objections from the other members. This report covers only the 7/7/10 modified version. However, a copy of the original proposal was previously submitted to the Board, and the Chair will submit a supplemental report covering the original proposal, upon request of the Board. The proposal is divided into three parts in this report, since each was discussed and voted on separately.

**RCP Goal 2, Policy 28**

Goal of Proposal: Adopt revised marginal lands policy directives into the RCP

Consensus on Goal? Yes

Consensus on Proposal? No

Consensus on Alternate Proposal? No

Potential Measure 49 claims? Yet to be determined

Measure 56 notice required? Yet to be determined

Discussion:

This item was considered at the July 7, July 12 and July 19, 2010 LCLUTF meetings. Currently, the Marginal Lands statute is interpreted by the March 1997 Board directive entitled "Supplement to Marginal Lands Information Sheet." However, there have been intervening judicial decisions that supersede portions of the 1997 information sheet. The goal is adopt revised policy directives regarding Marginal Lands into the rural comprehensive plan and there was consensus among LCLUTF members that this should be done. However, there was disagreement about what the specific policy directives should be. The following discussion focuses on those points of disagreement.

The 7/7/10 modified version of Goal One's Policy 28 proposal is attached as Exhibit A. There is also attached an alternate Policy 28 proposal prepared by staff, attached as Exhibit B. There are two differences between these proposals:

**60-year rotation vs. 50-year rotation**

Lane County has historically used a 50-year growth cycle assumption when computing the average annual income for Marginal Lands purposes. It was generally agreed on the LCLUTF that in many cases, switching to a 60-year growth cycle would increase the average annual income, and that sometimes, this increase in income would be enough to push the forest operation over the \$10,000 per year limit and disqualify the subject property from Marginal Lands designation.

Evidence in favor of retaining the 50-year rotation included a) oral and written testimony to the LCLUTF from professional forester Marc Setchko, b) reference to Oregon Court

of Appeals and LUBA decisions which rejected challenges to Lane County's use of a 50-year growth cycle, and c) a letter from the Oregon Department of Forestry to Mr. Just, dated May 23, 2008, which stated, among other things, that "a growth cycle of 50 years is a logical choice for Lane County." This evidence focused on establishing that the 50-year cycle is reasonable from a timber management point of view, and has also passed legal muster.

An additional supporting argument for the 50-year rotation is that it has taken years of court actions to reach resolution on what is acceptable data for 50-year rotations. Income calculations can now be made in an objective manner using just the mapped soil types and these approved data sources; however all approved sources use 50-year rotations. The LCLUTF was told by Mr. Setchko that in order to use 60-year rotations, unapproved data sources must be used, and in some cases more complex methods must be used, such as tree boring. He said that use of these methods opens the forester up to challenge that the methodology was not sound, the sampling was biased, not enough trees existed to permit accurate determinations, etc. The expressed concern was that switching to a 60-year rotation would disrupt many years of established case law and probably cause applicants and opponents to resume fighting over matters that have already been settled for 50-year rotations.

Evidence in favor of the 60-year rotation included an analysis by Mr. Just comparing the annual income potential of a particular site using both the 50- and 60-year rotations. The analysis showed that, when assuming the U.S. bond rate as the opportunity cost, higher average annual income was realized with the 60-year rotation. Also, the previously mentioned Oregon Department of Forestry letter stated that "[i]n Oregon, the range of harvest ages is broadly similar for both industrial and nonindustrial ownerships, 40 to 65 years depending on site and regime." This was pointed out as evidence that 60 years falls within the normal management range. One LCLUTF member also mentioned that Mr. Setchko told the group that marginal sites are managed for longer rotations and that rotations in the past were longer.

To summarize the arguments in favor of the 60-year rotation: a) 60 years is within today's typical 40-65 year rotation range, b) poorer sites require longer rotations to recover planting, release and harvest costs so selection of the longer end of today's 40-65 year range is appropriate, c) the slower growth on marginal sites means that 60 years can often produce higher average annual income than 50 years, and d) during the marginal lands test years of 1978-1982 rotations were longer than they are now, again pointing to the appropriateness of selecting on the high end of today's 40-65 year rotation range.

To summarize the arguments in favor of the 50-year rotation: a) 50 years is in the middle of today's typical 40-65 year rotation range, b) the Department of Forestry has endorsed a 50-year rotation for Lane County, c) LUBA and the Court of Appeals have rejected challenges to the 50-year rotation, d) approved data sources for calculating annual income under 50-year rotations are readily available and have a lengthy case law history informing their use, e) switching to 60-year rotations would likely cause renewed confusion and legal wrangling over matters that are already settled for 50-year rotations.

Inclusion of additional material taken from the Board's 1997 Information Sheet

The alternate proposal prepared by staff includes this additional explanatory statement, taken from the Board's March 1997 "Supplement to Marginal Lands Information Sheet":

*Marginal Lands are a subset of resource lands and are to be available for occupancy and use as tracts smaller in area than that required for other resource lands.*

The alternate proposal also includes an additional directive, which is also taken from the 1997 Information Sheet:

- (a) *To determine if a tract was making a "significant contribution" to commercial forestry at the time of the enactment of ORS 197.247 (1991 ed.), the following methodology can be used:*
  - (i) *Use the best information available regarding soils, topography, etc., to determine the optimal level of timber production for the tract.*
  - (ii) *Assume that the tract was reasonably managed.*
  - (iii) *Assume that in 1983 the stand was fully mature and ready for harvest.*

The additional provisions represent a continuation of the status quo, and were included by staff in the alternate proposal to ensure that all relevant provisions from the 1997 Information Sheet were transferred to the new Policy 28. Mr. Just indicated that he might object to inclusion of these provisions, but did not say why. There was no discussion about the implications of not including these provisions.

The task force members indicated their level of consensus<sup>1</sup> on the Goal One proposal as follows:

Mr. Emmons: 1  
Ms. Driscoll: 3  
Ms. Nelson, Mr. Kloos, Mr. Evans, Mr. Cornacchia, Mr. Reeder, Mr. Sisson, Mr. Lanfear: 6

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<sup>1</sup> Consensus Ratings:

- 1 Whole-heartedly agree
- 2 It's a good idea and the person could support the idea of bringing resources toward the motion
- 3 The person was supportive but not likely to want to put resources towards the motion
- 4 The person has reservations but would stand aside
- 5 The person had serious concerns, but could live with the motion
- 6 The person could not participate in the decision and would actively work to block it.

The task force members indicated their level of consensus on the alternate proposal as follows:

Ms. Nelson, Mr. Kloos, Mr. Evans, Mr. Cornacchia, Mr. Reeder, Mr. Sisson, Mr. Lanfear: 1  
Ms. Driscoll: 4  
Mr. Emmons: 6

### **RCP Goal 3, Policy 14 & RCP Goal 4, Policy 3(a) and (b) only**

Goal of Proposal: Add compliance with new Policy 28 as a Marginal Lands criterion

Consensus on Goal? Yes

Consensus on Proposal? Yes

Potential Measure 49 claims? Yet to be determined

Measure 56 notice required? Yet to be determined

Discussion:

This item was considered at the July 7 and July 12, 2010 LCLUTF meetings. The goal is to incorporate the new Goal 2, Policy 28 as a criterion for marginal lands designation. This is a housekeeping item. Proposed changes are shown below:

*RCP Goal 3: Agricultural Land Policy 14*

*14. Land may be designated as marginal land if it complies with the following criteria:*

*a. The requirements of ORS 197.247, and*

*b. **Lane County General Plan Policies, Goal 2: Land Use Planning, Policy 28, and***

*c. Lane County General Plan Policies, Goal 5: Flora and Fauna, policies numbered 11 and 12.*

*RCP Goal 4: Forest Lands Policy 3*

*3. ~~Forest lands that satisfy the requirements of ORS 197.247 may designate as Marginal Lands and such designations shall also made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247.~~*

***Land may be designated as marginal land if it complies with the following criteria:***

***a. The requirements of ORS 197.247,***

***b. Lane County General Plan Policies, Goal 2: Land Use Planning, Policy 28.***

The task force members were unanimous in their support for this amendment.

### **RCP Goal 4, Policy 3(c)**

Goal of Proposal: Add big-game range assessment to marginal lands criteria

Consensus on Goal? No

Consensus on Proposal? No

Potential Measure 49 claims? Yet to be determined

Measure 56 notice required? Yet to be determined

Discussion:

This item was considered at the July 7 and July 12, 2010 LCLUTF meetings. The proposal is to add the following additional marginal lands approval criterion to the previously discussed RCP Goal 4 Forest Lands Policy 3:

**c. Lane County General Plan Policies, Goal 5: Flora and Fauna, policies 11 and 12.**

Adding this provision would require forest-designated properties to comply with Big Game Range Habitat density requirements in order to qualify as Marginal Lands. This is already a requirement for agriculture-designated lands (see RCP Goal 3: Agricultural Land Policy 14 above). Staff told the LCLUTF that the reason the Big Game provisions have historically applied only to farmlands is that the reservoir of unbuildable F-1 forest land has been considered adequate to ensure habitat preservation in forested areas.

This provision is only triggered if the subject property is in an area inventoried in the RCP as Major or Peripheral Big Game Range Habitat. Oregon Department of Fish and Wildlife recommend overall residential densities for Peripheral Big Game Range at one dwelling per 40 acres and for Major Big Game Range one dwelling per 80 acres for protection of big game habitat. Any density above the recommendations is considered to conflict with Goal 5 and would be allowed only after resolution in accordance with OAR 660 Division 16.

The task force members indicated their level of consensus as follows:

Mr. Just, Mr. Emmons: 1

Ms. Nelson, Ms. Driscoll: 2

Mr. Kloos, Mr. Evans, Mr. Cornacchia, Mr. Reeder, Mr. Sisson, Mr. Lanfear: 6

Submitted this 27th day of July, 2010, by:



Mia Nelson, Chair



Micheal M. Reeder, Vice Chair

Attachments: Exhibit A: Modified proposal prepared by Goal One  
Exhibit B: Alternate proposal prepared by staff

# EXHIBIT A

## Goal 1 Coalition: Proposed Goal 2, Policy 28

28. Marginal Lands. Lane County shall designate and zone as Marginal Lands property meeting the requirements of ORS 197.247 (1991 ed.). Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247 (1991 ed.). In establishing compliance with ORS 197.247 (1991 ed.), the following directives shall be applied:
- a. No evidence of human activity on the land is required for forest land to be “managed” for purposes of ORS 197.247(1)(a) (1991 ed.). The conscious decision not to convert the land to another use is enough evidence of management to meet the statutory intent, provided there is a significant amount of merchantable or potentially merchantable trees of the property. Likewise, evidence of timber harvest since 1978 would suffice to show management even if there were no trees currently on the property. For farm land, no evidence of farm use during the 5-year statutory window would indicate that land was not managed for farm use.
  - b. All lands owned or managed by an individual or other entity as part of a farm or forest operation during the period 1978 through 1982 shall be considered in addressing the “income” tests established by ORS 197.247(1)(a) (1991 ed.).
  - c. For the purposes of ORS 197.247(1)(a) (1991 ed.), the calculation of potential forest operation income shall be based on the five calendar years preceding 1983.
  - d. To calculate average annual income over the growth cycle, a growth cycle of 60 years shall be assumed.
  - e. In addressing the timber productivity test, the potential productivity of the proposed Marginal Land property shall be consistent with OAR 660-006-0010, as applicable.

## EXHIBIT B

### REVISED – RCP Goal 2, Policy 28

28. Marginal Lands. Marginal Lands are a subset of resource lands and are to be available for occupancy and use as tracts smaller in area than that required for other resource lands. Lane County shall designate and zone as Marginal Lands land meeting the requirements of ORS 197.247 (1991 ed.). Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247 (1991 ed.). In establishing compliance with ORS 197.247 (1991 ed.), the following directives shall be applied:
- (b) No evidence of human activity on the land is required for forest land to be “managed” for purposes of ORS 197.247(1)(a) (1991 ed.). The conscious decision not to convert the land to another use is enough evidence of management to meet the statutory intent, provided there is a significant amount of merchantable or potentially merchantable trees of the property. Likewise, evidence of timber harvest since 1978 would suffice to show management even if there were no trees currently on the property. For farm land, no evidence of farm use during the 5-year statutory window would indicate that land was not managed for farm use.
  - (c) All lands owned or managed by an individual or other entity as part of a farm or forest operation during the period 1978 through 1982 shall be considered in addressing the “income” tests established by ORS 197.247(1)(a) (1991 ed.).
  - (d) To determine if a tract was making a “significant contribution” to commercial forestry at the time of the enactment of ORS 197.247 (1991 ed.), the following methodology can be used:
    - (i) Use the best information available regarding soils, topography, etc., to determine the optimal level of timber production for the tract.
    - (ii) Assume that the tract was reasonably managed.
    - (iii) Assume that in 1983 the stand was fully mature and ready for harvest.
  - (e) For the purposes of ORS 197.247(1)(a) (1991 ed.), the calculation of potential forest operation income shall be based on the five calendar years preceding 1983.
  - (f) To calculate average annual income over the growth cycle, a growth cycle of 50 years shall be assumed.
  - (g) In addressing the timber productivity test, the potential productivity of the proposed Marginal Land property shall be consistent with OAR 660-006-0010, as applicable.

## LANE COUNTY LAND USE TASK FORCE REPORT

### JANUARY 2010 GOAL ONE COALITION PROPOSAL REGARDING HOME OCCUPATIONS

Goal of Proposal: Adopt improved standards for home occupations  
Consensus on Goal? See discussion  
Consensus on Proposal? No  
Consensus on Alternate Proposal? No  
Potential Measure 49 claims? Yet to be determined  
Measure 56 notice required? Yet to be determined

#### Discussion:

This item was considered at the April 1, April 5, April 12, April 19, April 26, June 3 and July 26, 2010 LCLUTF meetings, as well as four subcommittee meetings in June and July. The author of this proposal is Jim Just of Goal One Coalition, a Lane County Land Use Task Force (LCLUTF) member. The Goal One proposal is attached to this report as Exhibit A.

The stated intent of the Goal One proposal is "to eliminate the potential for approval of home occupations that involve intensive uses that interfere with the rural character of the area." Not all LCLUTF members agreed that the existing code was problematic in this regard. Nevertheless, the LCLUTF did generally agree that the code could be improved, and also agreed to work together to accomplish this. Examples of potential improvements the LCLUTF discussed are:

- Adopt clear and objective performance standards that measure impacts on neighbors
- Adopt uniform review and renewal procedures across the various zones
- Remove the prohibition against siting home occupations in new buildings in the F-2 zone
- Attempt to provide a way that no-impact office use be allowed outright in resource zones
- Resolve naming confusion caused by two types of home occupation in the RR zone

The Goal One proposal was not discussed in detail; instead the group focused on assessing the various issues surrounding home occupations, and the ways that the existing code addressed these concerns. Staff also prepared a detailed comparison of the different home occupation provisions in the various zoning districts, and the differences between these were discussed. Rather than attempt to summarize these discussions, this report includes relevant minutes from the April 12 and April 26 meetings; see Exhibit C. Other than the July 26 meeting, for which minutes are not yet available, the bulk of the LCLUTF discussion occurred at these two meetings.

After it became clear that significant work would be required to create clear and objective performance standards for home occupations, the LCLUTF formed a subcommittee comprised of Bill Kloos, Bob Emmons, Ryan Sisson and Mia Nelson. This subcommittee met four times and, with staff's assistance, created the alternate proposal attached hereto as Exhibit B.

Unfortunately, the LCLUTF was not able to discuss the alternate proposal until its last meeting on July 26. There was insufficient time for members to enunciate their concerns with the alternate proposal, let alone resolve those concerns. Members expressed frustration that the July 30 deadline for completion would not allow them to complete work on this item. Given the short time available at the final meeting, the Chair called votes on the Goal One original proposal and on the alternate proposal.



*LCLUTF members indicated their level of consensus<sup>1</sup> on the Goal One proposal as follows:*

Mr. Emmons, Ms. Driscoll: 4

Mr. Reed: 5.5

Mr. Mann, Ms. Nelson, Mr. Cornacchia, Mr. Kloos, Mr. Sisson, Mr. Evans, Mr. Lanfear: 6

*LCLUTF members indicated their level of consensus on the alternate proposal as follows:*

Mr. Emmons, Ms. Nelson: 1

Mr. Reed, Mr. Cornacchia, Mr. Kloos, Mr. Sisson: 2

Ms. Driscoll: 3

Mr. Mann: 5

Mr. Evans, Mr. Lanfear: 6

The Chair also called votes on three known points of disagreement:

*Regarding the range of allowed square footage in proposed section (e)(iv):*

Mr. Emmons, Ms. Driscoll, Mr. Cornacchia, Bill Kloos: 1,200 sq. ft. baseline allowed size, with 3,000 sq. ft. maximum allowed size

Mr. Lanfear, Mr. Sisson, Ms. Nelson, Mr. Mann, Mr. Reed: 1,800 sq. ft. baseline allowed size, with 3,000 sq. ft. maximum allowed size

Mr. Evans: 1,800 sq. ft. baseline allowed size, with 3,000 sq. ft. maximum allowed size for Rural Residential only, and no size limits for resource zones

*Regarding the number of allowed round trips in proposed section (e)(vii):*

Mr. Lanfear: undecided

Mr. Emmons: 3

Ms. Driscoll, Mr. Cornacchia, Mr. Kloos, Ms. Nelson, Mr. Reed: 5

Mr. Sisson: 8

Mr. Evans: 10

Mr. Mann: 50

*Regarding whether to strike "on-site automotive repair or service" from the list of prohibited home occupations in proposed section (a):*

Mr. Lanfear, Ms. Driscoll, Mr. Evans, Mr. Mann: 1

Ms. Nelson, Mr. Cornacchia, Mr. Sisson, Mr. Reed: 4

Mr. Kloos, Mr. Emmons: 6

It should not be assumed that these three issues are the only points of disagreement regarding the alternate proposal, since there was insufficient time for members to fully express their concerns. Some of the other concerns that were mentioned, but not voted on, include:

Application of the same requirements to home occupations in the resource and residential zones.

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<sup>1</sup> Consensus Ratings:

1 Whole-heartedly agree

2 It's a good idea and the person could support the idea of bringing resources toward the motion

3 The person was supportive but not likely to want to put resources towards the motion

4 The person has reservations but would stand aside

5 The person had serious concerns, but could live with the motion

6 The person could not participate in the decision and would actively work to block it.

Some LCLUTF members were largely comfortable with the alternative proposal if it were applied only to RR zoned properties, but not to EFU and F-2 properties. There was discussion about resource-zoned parcels being generally larger and more removed from adjacent residential uses that could be impacted by the home occupation, and that relaxed rules were therefore appropriate. Others argued that parcel size is what controls the level of impact on neighboring properties, and that resource-zoned properties could be as small or even smaller than RR parcels.

Renewal process concerns. The alternate proposal provides a three-year permit that can be renewed for additional three-year periods upon a showing that the home occupation is complying with the performance standards in section (e) and any conditions of approval. While the applicant would not be required to prove for a second time that the home occupation would not interfere with uses permitted by the zoning of nearby properties, the renewal process would nevertheless be a land use decision, and some LCLUTF members were concerned that disgruntled neighbors might unreasonably challenge the renewal, causing expense and delay for the operator.


ORS 215.296. It was noted that the alternate proposal did not contain the ORS 215.296 requirement that applicants demonstrate that proposed home occupations located on EFU lands would not force a significant change in accepted farm or forest practices or significantly increase the cost of these practices.

Retention of less-intensive home occupation as an outright permitted use in the RR zone. Currently, the RR zone provides for two types of home occupation. A less intensive use, with limitations on characteristics such as size, customer visits, traffic and signage is permitted as an outright permitted use. A more intensive use is also allowed, subject to Director approval. Some members took issue with the alternative proposal's failure to carry forward the less intensive permitted home occupation option.

It is also important to note that the subcommittee did not have time to prepare new code language allowing, as an outright permitted use, home businesses that have no non-resident employees and no discernable impacts on neighbors. This is not to be confused with kind of low-impact home occupation currently allowed as a permitted use in the RR zone, described above. Concerns were raised that due to limitations present in state law, it might not be possible to provide for such no-impact home occupations as a permitted use in resource zones. However, it was the consensus of the LCLUTF that if it were possible, this would be desirable.

In summary, despite extensive discussion and progress on the home occupation issue, substantial work remains. LCLUTF members were in general agreement that they would like to reconvene in September to finish the home occupation work, and many members stated that they believed consensus on an alternate proposal would eventually be possible.

Submitted this 30th day of July, 2010, by:



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Mia Nelson, Chair

Attachments: Exhibit A: Original proposal prepared by Goal One  
Exhibit B: Alternate proposal prepared by subcommittee & staff  
Exhibit C: April 12 and April 26 minutes

## EXHIBIT A

### GOAL ONE PROPOSAL

#### III. PROPOSED CODE AMENDMENTS RELATED TO HOME OCCUPATIONS

##### A. Add new definition of "home occupation":

LC 16.090.

"Home occupation" means a small-scale business activity carried on within a dwelling or other existing buildings normally associated with uses permitted in the zone, by a member or members of the family who occupy the dwelling, where

(1) the occupation is secondary to the use of the dwelling for living purposes and the residential character of the dwelling is maintained, and

(2) the activities satisfy one of the following conditions:

(a) The activities are primarily intended to serve producers or residents of the surrounding rural area, or

(b) The activities are not primarily intended to serve producers or residents of the surrounding rural area, and

(i) the activities do not require ingoing or outgoing deliveries of supplies or finished products, do not generate traffic, emissions, or wastes; and

(ii) the activities do not produce noise, obnoxious odors, vibrations, glare, fumes or electrical interference detectable to normal sensory perception from a location off of the subject property.

##### B. Amend LC 16.290 to require a home occupation in the RR zone to be listed as a use allowed subject to director approval.

Currently, home occupations in this zone are allowed as permitted uses. In every other zone, home occupations require director approval.

##### C. Discussion

The intent of the code amendment is to eliminate the potential for approval of home occupations that involve intensive uses that interfere with the rural character of the area. While state statute, ORS 215.448, and Lane Code require the occupation to be operated in a dwelling or "other buildings normally associated with uses permitted in the zone," home occupations that have external activities that severely impact the neighborhood have been approved. The adoption of a definition that clarifies the scope of home occupations will assist the decision maker in approving only those home occupations that are appropriate.

## EXHIBIT B

### ALTERNATE PROPOSAL

( ) Home Occupation. A home occupation is an allowed use subject to the prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the option for the Director to schedule the application for a hearing with the Hearings Official pursuant to LC 14.110, and compliance with the following criteria:

(a) Except for the repair and maintenance of equipment used for accepted farm or forest practices, on-site automotive repair or service, painting of vehicles, trailers, boats or machinery, or pest control occupations are not allowed as home occupations. This provision applies only to prospective home occupations and does not apply to home occupations lawfully existing on the effective date that LC 16.[ ] was applied to the subject property.

(b) Nothing in this section authorizes the construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.

(c) The home occupation shall not unreasonably interfere with other permitted uses on adjacent properties or uses permitted in the zone in which the property is located.

(d) The home occupation shall not be used as justification for a zone change.

(e) Performance Standards. The applicant shall demonstrate the home occupation shall be conducted in a manner that complies with the performance standards below:

(i) The home occupation shall be operated by a resident of the property on which the home occupation is located.

(ii) The home occupation shall employ no more than five full-time or part-time persons, including residents of the property on which the home occupation is located.

(iii) The home occupation shall be operated substantially in the dwelling or other buildings normally associated with uses in the zone in which the property is located.

(aa) "Operated substantially in" means indoors except accessory home occupation uses that are normally located outdoors such as: advertising signs for the home occupation; roads or driveways for ingress and egress; areas for loading or unloading home occupation vehicles; employee and customer parking spaces; parking for vehicles operated as part of the home occupation; buffered or screened storage areas; and outdoor accessory uses similar to the above as determined by the Approval Authority.

(iv) The amount of building floor area of any structure other than the residence used for the home occupation shall not exceed (1,200 or 1,800) square feet, except that for every 100 feet the building is set back from surrounding properties, the building floor area may be increased an additional 600 square feet, up to a maximum of 3,000 square feet.

(v) Outdoor storage incidental to the home occupation shall be screened from view from surrounding properties and shall not exceed 600 square feet. Vegetative screening shall be

of a density and type that will obscure at least 90% of the storage area within three years after the home occupation is initiated. Use of native plants is encouraged.

(vi) Lighting fixtures shall be directed and/or shielded so as to confine the light to the target area, and within the boundaries of the property.

(vii) Visits to the site related to the home occupation, including but not limited to customer visits, shipping or deliveries, or employees, shall not exceed a weekly average of X round-trips per day.

(viii) Dust, smoke, odor, vibrations, glare, or radio or television interference generated by the home occupation shall not be noticeable, and noise shall not be plainly audible, from beyond the property boundaries.

(ix) Signage shall be limited to one non-illuminated sign not exceeding four square feet in area and shall not be located within the required front yard setback nor within any road right-of-way.

(x) Use of hazardous materials in a manufacturing process shall be limited to those demonstrated in the application to comply with all applicable regulations.

(xi) On-premise parking and vehicle maneuvering shall be of sufficient area to accommodate all vehicles associated with the home occupation.

(xii) The home occupation shall comply with sanitation and building code requirements.

(xiii) The home occupation shall comply with all County, State and Federal fire, life and occupational safety requirements.

(xiv) The home occupation shall comply with any conditions of approval established by the Approval Authority.

(f) Approval of an application for a home occupation shall be valid for three years from the final date of approval. A home occupation may receive three-year extensions subject to the submittal of an application pursuant to LC 14.050 prior to the expiration date, approval of the application pursuant to LC 14.100 with the option for the Director to schedule the application for a hearing with the Hearings Official pursuant to LC 14.110, and demonstration of continuous compliance with the above performance standards [LC 16. [ ](e)] and any conditions of approval. A physical inspection shall be conducted to verify the continuous compliance of the home occupation with the above performance standards [LC 16. [ ](e)] and any conditions of approval. At the discretion of the Director, a home occupation that is not in compliance with the above performance standards [LC 16. [ ](e)] and any conditions of approval or for which a request for extension has not been received may not be extended.

# EXHIBIT C

## MINUTES

Lane County Land Use Task Force  
Harris Hall—Public Service Building—125 East 8th Avenue  
Eugene, Oregon

April 12, 2010  
3:30 p.m.

**PRESENT:** Ms. Nelson, Chair; Steve Cornacchia, Pam Driscoll, Bob Emmons, Mike Evans, Jim Just, Tom Lanfear, Mike Reeder, Bill Kloos, Ryan Sisson, members; Mike Farthing, Jim Mann, alternates; Sarah Wilkinson, Mark Rust, Matt Laird, Kent Howe, Jane Burgess, Jerry Kendall, Lane County Land Management; Marc Kardell, Associate County Counsel.

### ADMINISTRATIVE

- **Review/Revise Agenda**

Ms. Wilkinson reviewed the contents of the meeting packet. Items included:

1. *Lane County Land Use Task Force Staff Meeting Notes, April 5, 2010*
2. *Proposed Code language amending Lane Manual Chapter 5, Administrative Enforcement*
3. *Summary Table of Home Occupations and Rural Home Business Provisions, to which was attached a list of approval criteria for Permitted Home Occupation (Rural Residential Zone) and a list of approval criteria for Director Approval Home Occupations and Rural Home Businesses*
4. *Home Occupations and Rural Home Business Special Use Permits Initialized January 2005 – January 2010*
5. *Residential Pesticide Businesses: Investigating the threat they pose to neighborhood health and safety*
6. *Information about all Lane County Ordinances Initiated by Property Owners for Developed and Committee Exceptions*
7. *Goal One Coalition Proposals: Technical Fix and “Big Picture” Policy Elements*

### DISCUSSION ITEM: COMPLIANCE ENHANCEMENTS

#### Staff Available for Q & A:

**Jane Burgess, Compliance Officer**  
**Marc Kardell, Assistant County Counsel**  
**Jerry Kendell, Associate Planner**

Mr. Reeder distributed an alternative to the staff-proposed text for Chapter 5:

*Upon receipt of a land use application, planning staff shall refer the land use application to the Compliance Program to review the subject property file for any outstanding compliance actions. After reviewing all the relevant facts, Compliance Program staff shall take whatever action deemed appropriate consistent with Lane Code Chapter 5. In no case shall the review of an application for a land use or building permit be delayed because of the compliance status of the subject property.*

Mr. Kendall reviewed the process currently used by staff to check for pending enforcement actions and noted that it pertained to both land use and building permit applications.

The task force discussed the text proposed by Mr. Reeder and agreed that the last two sentences were not necessary because of issues of redundancy and conflicts with State and local statutes. Mr. Howe concurred with the removal of those sentences. He proposed that the phrase “planning staff” be replaced with “Land Management staff.”

Task force members unanimously agreed on the following revised text:

*Upon receipt of a land use application or permit, Land Management staff shall review the subject property file for any outstanding compliance actions and if any are found shall refer the application or permit to the Compliance Program.*

Ms. Nelson asked staff to provide the revised text to the task force for its review at the next meeting.

#### **DISCUSSION ITEM: HOME OCCUPATIONS**

Ms. Nelson solicited thoughts and observations regarding the home occupation zones. Mr. Emmons advocated for the same kind of compatibility language found in the Rural Residential (RR) zone to be included in the EFU and F-2 zones due to the increased parcelization he perceived had occurred in those zones.

Responding to a question from Ms. Nelson, Mr. Mann provided background on the creation of the different categories of home occupations, explaining that the RR zone, F-2, and EFU zones were adopted in 2002. The RR zone was revised as a result of periodic review; the EFU and F-2 zones were revised in response to State law changes related to resource zones. The zone revisions were on separate tracks, and adding to the differences were the State regulations that governed the different land types. Staff received direction from the Board of County Commissioners to do the minimum necessary to comply with the State regulations in regard to the farm and forest zones. He attributed that direction to the need to complete the revisions in a timely manner.

Ms. Nelson concurred with Mr. Emmons that it seemed logical to extend the RR compatibility provisions to the other home occupation zones.

Mr. Evans recalled the more extensive work that went into the home occupation compatibility standards associated with EFU and F-2 zones, resulting in a code that called for compatibility with not only uses in the zone, but uses in other nearby zones. Ms. Nelson acknowledged the

point. Mr. Evans said the home occupation standards were more stringent than the State standards. Mr. Mann concurred, adding that there were differences between the EFU and F-2 standards; one was that a home occupation in an F-2 zone must be housed in an existing structure. Ms. Nelson asked if that was by design. Mr. Evans said yes. He said that the home occupation and home business in the RR zone went through considerable public review. Ms. Nelson said that review showed in the code. She observed that nothing in the code precluded someone from building a building and then applying for a home occupation permit.

Mr. Emmons asked if that was true if one was replacing a designated agriculture building with a special use building. Ms. Nelson pointed to the code limitation on structures that would not otherwise be allowed in the zone. She said that a property owner could not simply erect a special use structure in an agriculture zone and locate a home occupation in it.

Ms. Nelson suggested that if the County retained the text related to existing buildings, it merely encouraged people to build a building and then seek to permit the home occupation. She said that the County could not stop someone from building a structure that was allowed in the zone, no matter what they were going to do with it in the future. Mr. Emmons wondered if the task force could recommend the County stop such a thing from occurring. Ms. Nelson did not think the County could prohibit that, and she questioned what the text accomplished other than putting an individual in the position of having to risk being denied the home occupation permit.

Mr. Emmons referred to the Tiller case, which involved the location of a non-permitted business in an agriculture building that was later replaced without permit and the business continued. Ms. Nelson pointed out the code contained enforcement provisions designed to address the non-permitted building. She urged the task force to separate operational issues from code defects. Mr. Evans wanted to focus on the problems that existed with home occupations.

Mr. Just believed that the issues of concern to the task force were compatibility and uses that did not belong in the countryside because they were urban in nature. Task force members suggested the former issue was a controversial one. Mr. Howe recalled that the State recommended a focus on size, and concurred that a focus on use would be controversial. Mr. Lanfear pointed out the State statute did not include limitations on sizes in the forest zones. Mr. Just thought that was an "enormous" problem. Mr. Kloos asked why Mr. Just did not take his concern to the State Legislature. Mr. Just said it was raised as a problem in Lane County and the task force had the opportunity to address it locally. He believed it should be addressed by the State as well.

Ms. Nelson believed the code governing home occupations was very complex and questioned if the task force could compress the six categories into a single unified definition of home occupation. She did not understand why it mattered which zone was involved. She suggested that the task force focus on the rural home business definition, re-title it "home occupation," and use it for all the zones. She suggested the requirements not specifically included in the category were implicit in the renewal criteria and might be considered redundant. She asked if there was a reason that home occupations meant something different in every zone. Ms. Nelson suggested the outright permitted uses in the RR home occupation category could be retitled "Home Office" given how insignificant the uses involved were.

Mr. Cornacchia did not perceive a structural problem with the code, but instead was hearing concerns expressed by members about compatibility and questions about why permits were



required in some categories and not in others. He was comfortable with the code language as presented. Mr. Cornacchia was concerned about the fact that the RR home occupation was a permitted use but it appeared to be accompanied by many conditions related to size, employees, and operator. He suggested that analysis only occurred upon noncompliance; in the other cases, the analysis occurred beforehand. He questioned whether the conditions placed the outright permitted status of the use implied that if one met the conditions, one did not affect one's neighbor, and he was not sure he agreed. Mr. Cornacchia expressed an interest in further examination of the RR home occupation zone, urged a general focus on compatibility.

Mr. Cornacchia contemplated an approach that required all the owner-occupied businesses that operated at Saturday Market to secure a home occupation permit, and asked about all the people who did business on their computers at home without impact on others. He said if the County made all home occupations subject to permit, it would catch up those people as well, and he objected to that. He indicated he needed a compatibility threshold to address his concern about the "little guy."

Mr. Emmons acknowledged Mr. Cornacchia's concerns and speculated that most people would agree those were innocuous, inoffensive uses. However, uses such as plumbing, excavation, gutters and roofing, and auto repair were more urban than rural activities. He said that determining compatibility in a rural zone was a challenge in general but it was not for the neighbors, who absorbed the impact of those uses.

Mr. Howe pointed out that the different uses, with the exception of the home occupation use, included a compatibility analysis. If the task force wanted to avoid making such decisions land use decisions, it needed to avoid introducing a discretionary decision into the process. He indicated, in response to a comment from Ms. Driscoll about the potential employment of hazardous materials in production processes, that the Fire Marshal reviewed home occupation applications for the use of hazardous materials.

Mr. Just supported an approach that included a use without compatibility criteria entitled Home Occupation—Office, and another use as proposed by Ms. Nelson that included expanded compatibility criteria. That left only the question of whether some uses should be in a rural area at all, even if they were compatible. He cited as an example a manufacturing business that shipped its product around the world without discernible impact and suggested in spite of that, it did not belong in a rural area. Other members asked why not. Mr. Just maintained that land was cheaper in the rural areas.

Mr. Howe recalled the board's policy when it first authorized home occupations, which was on fostering cottage industries. Those that become successful were to relocate to urban areas. He said that not only was cottage industry the focus, it was encouraged in the rural areas.

Mr. Sisson expressed concern about placing more code interpretation responsibility on County staff when it asked them to become involved in State and federal regulations related to licensing for different businesses. He hoped that the Fire Marshal was able to efficiently refer such applications to the appropriate agency.

The task force briefly discussed an oil spill that Mr. Emmons understood had occurred on the Johnson property. Ms. Burgess indicated that local staff of the Department of Environmental

Quality (DEQ) was consulted about the spill. That agency had significant spill requirements. Mr. Emmons said he was told a staff person from the Salem office of the DEQ had asserted that the spill was reportable and should have been addressed by a local agency. Ms. Burgess said she had asked that individual, who Ms. Burgess understood had visited the site, if she could verify and document the source of the spill, and she did not respond to that communication.

Mr. Emmons advocated for strong code language that precluded the need for enforcement action. He said that in the case he cited, one could not access the site without trespassing but there was evidence a spill had occurred. He asked at what point one accepted that as evidence there was a problem.

Mr. Kendall reported that in the case cited, the County had two reported alleged spills. In the first report, the local fire department had indicated no cause for later follow-up and DEQ did not respond, and in the second report, the local and State DEQ had been at odds without resolution over whether there was a spill from the property. Ms. Burgess added that when she investigated a case, she needed to consider what documentation she could present to the Hearings Official because the burden of proof was on Lane County.

Ms. Nelson suggested that the renewal process was a tool in place already to address the issues raised by Mr. Emmons and suggested that, if expanded to other zones, provided the tool Mr. Emmons might be seeking. Mr. Lanfear indicated that the renewal process might not be the appropriate tool as did not include a reevaluation of the use and whether it complied with the criteria. Ms. Nelson suggested that issues such as appropriate handling of hazardous materials could be included as a condition of approval in all zones. Mr. Cornacchia determined from Mr. Lanfear that there was no notice for the renewal process. He suggested that the renewal process could include notice as well as a demonstration of consistency with the criteria.

Ms. Driscoll suggested yearly inspection of home occupations so neighbors were not put in the position of having to keep watch. Mr. Evans pointed out that in the case of businesses using hazardous materials, such inspections did occur.

Mr. Kloos liked the idea of creating a window of opportunity for neighbors to discuss what has not worked for them. He did not perceive the renewal process as an opportunity to revisit the original permit standards, but as a time to enforce the standards and revoke the permit if the situation was bad enough. Mr. Lanfear agreed.

By way of addressing the concern raised about hazardous materials, Ms. Nelson suggested that a condition of the renewal process could be compliance with other applicable laws. Mr. Lanfear agreed. He did not think it was necessary to lay out every applicable law in the permit. Mr. Kloos thought that the text should be included. Ms. Nelson determined from staff that the home occupation permit included the right of inspection.

Mr. Cornacchia wanted to ensure that the task force's focus was on regulated hazardous materials, not those that someone believed were hazardous but were legally not. He did not think it necessary for the County to inspect all home occupations for hazardous materials. He suggested a question for the task force to resolve was whether to put the text related to hazardous materials for the RR home occupation zone in the other zones.

Ms. Nelson suggested another question was whether there was a material difference between the RR home business and other home business category in other zones. Mr. Evans thought there was a difference. He said that other counties applied an entirely different set of standards depending on parcel size; the more standards, the more dense the area. He disagreed with Mr. Emmons' assertion that the EFU and F-2 zones were becoming as dense as the RR. He thought there was a big difference in density and a need for the tighter regulations that existed in the RR zone. He did not support moving the regulations that applied to the RR to the resource zones.

Ms. Nelson asked how Mr. Evans felt about a density standard. Mr. Evans did not think the task force had time to revamp the system in that manner.

Mr. Evans endorsed Ms. Nelson's suggestion to move the requirements for hazardous materials into the other zones, saying it could solve the problems raised by one of the case studies. He suggested the other case study represented an instance of neighborhood compatibility with unique circumstances, and the task force might be able to develop a standard to address that problem.

Speaking to the case studies, Mr. Lanfear recalled that those applications went through the review process but were not living up to the approval. In one instance, there was an absentee owner renting to a tenant that operates a business that effects the neighbors. He suggested the task force consider a code provision stipulating the owner of the property with a home occupation must live on the property. Mr. Just endorsed the idea.

Mr. Just advocated for the creation of a checklist based on the existing compliance standards to be applied to all zones, and questioned why such a checklist should not be applied. In response, Mr. Cornacchia offered as an example the noise standard for the RR home occupation and RR home business, which was a higher standard than the State, federal, and County standard because it stated that noise could not be audible at the property line. He suggested such a standard would be inappropriate for larger parcels zoned EFU, F-1, or F-2, particularly since so few contained houses and those that did were frequently well-buffered homesteads. He did not think those properties needed the same protection.

Ms. Nelson referred the task force to Mr. Just's original proposal for home occupations and asked members for their response to it. She said that it appeared to go beyond what Mr. Just was saying he would be satisfied with at this time. There was no consensus among task force members in regard to Mr. Just's proposal. Ms. Nelson determined that members believed that more agreement could be reached with more discussion.

Mr. Just reiterated his support for a checklist of compliance standards to be used in the decision-making process. He acknowledged he had not heard much enthusiasm for addressing his concerns regarding appropriate home occupations for urban and rural areas, but was willing to let that go if the task force could agree on some compatibility standards that were an improvement on the existing standards. Responding to a question from Ms. Nelson, Mr. Just indicated he was willing to give up the entire draft and move on.

Ms. Nelson determined that Mr. Just was satisfied with the existing provisions related to the RR home occupation zone. Mr. Lanfear recommended that the task force rename RR home business to home occupation and reclassify the outright allowed use as a minor home occupation. There was general concurrence.

Responding to a concern expressed by Mr. Just about the number of employees, Mr. Evans clarified that such occupations could have only one outside employees.

Mr. Evans summarized the discussion, saying the task force appeared to have agreed to add the text regarding conditions of approval related to hazardous materials from the RR zone into the EFU zones (Section 16.290(3)(e)(vii)). He asked about the suggestion to require the owner to live on the property where the home occupation was located, either minor or major. The task force could not agree, and deferred discussion to a future meeting.

**NEXT STEPS—Meeting Schedule, Next Agenda**

The task force scheduled the next meeting for April 19, and agreed to poll on the outstanding issues related to home occupations at that time.

The meeting adjourned at 5:30 p.m.

*(Recorded by Kimberly Young)*

## MINUTES

Lane County Land Use Task Force  
Harris Hall  
Lane County Building —125 East 8th Avenue  
Eugene, Oregon

April 26, 2010  
3:30 p.m.

PRESENT: Mia Nelson, Chair; Mike Reeder, Vice Chair; Steve Cornacchia, Mike Evans, Pam Driscoll, Jim Just, Robert Emmons, Bill Kloos, Ryan Sisson, Thom Lanfear, members; Mike Farthing, Jeremy Keepers, Jim Mann, Ron Funke, alternates; Sarah Wilkinson, Matt Laird, Kent Howe, Jerry Kendall, Lane County Land Management Division.

### ADMINISTRATION

- Review/Revise Agenda

Mr. Farthing stood in for Mr. Cornacchia.

Ms. Nelson convened the meeting. There were no changes made to the agenda.

### DISCUSSION ITEM: HOME OCCUPATIONS

Ms. Nelson referred to the memorandum submitted by Mr. Kloos regarding home occupation and suggested the task force begin with permitted home occupation criteria for the Rural Residential Zone.

Mr. Just wanted to define home occupation criteria as a resident working from a home office.

Mr. Kloos said home office should be defined. He ascertained from Mr. Just that he meant the proposed language in (g) to cover all home occupations. He averred that they were shrinking the effect of the language if it was placed inside the description of home occupation. He pointed out that statutes could not be altered at the county level.

Mr. Just asked how the uses would be regulated then. Mr. Kloos responded that it would be an enforcement issue.

Ms. Nelson wanted to try to define home occupations by reviewing the list of *Permitted Home Occupation (Rural Residential Zone)*. She added that she would be comfortable leaving the home office type of home occupation out of the code.

Mr. Just thought that the home office use would not generate problems that would bring attention to the home occupation. He did not think they needed to worry about it. Ms. Driscoll concurred.

Mr. Evans could not support the proposed changes made by Mr. Just and Mr. Emmons. He thought they were looking at incorporating some standards for the home occupation current category and code to make the codes easier to read and more uniform.

Mr. Reeder agreed. He liked Mr. Kloos' suggestion that they figure out what should not be regulated as a starting place.

Mr. Kloos explained that his objective was to describe something that was completely innocuous and remove it from regulation.

Mr. Lanfear observed that the standards had been developed over time with the citizens of Lane County and were acceptable in the residential areas. He did not think it would be appropriate to change it without public input. Mr. Just clarified that it was not their intent to change the Rural Residential home occupations.

Mr. Lanfear suggested they send this item to the back and let staff work on it. It was his feeling that they could spend a lot of time on it. Ms. Driscoll echoed this. She felt it was not one of the larger pieces of their work.

Mr. Emmons noted that a good portion of the draft had come from the Santa Clara, California ordinance.

Mr. Lanfear felt that home occupations were somewhat self-regulating in that people could work at home and if they violated the code, someone could complain about them. Mr. Reeder noted that just because someone complained did not mean that there was an impact.

Mr. Evans listed items the task force had some agreement on:

- That they could pull the standards out of the Rural Residential zone that could be used in the Farm and Forest zones to measure the home occupations;
- That the conflict review should be made consistent;
- They should make a uniform two-year renewal or eliminate it;
- That the existing building provision should be omitted from the F-2 zone;
- A non-home occupation should be developed that could fit in the code.

He proposed that the task force give this to staff for them to work out the details and then they could bring it back to the task force or they could put it into the work program for the Planning Commission.

Mr. Emmons wanted language to address impacts across all of the zones.

Mr. Cornacchia said if they did move this item to the back he did not want it portrayed to the commissioners as being the result of an impasse. He would describe it as a timeliness matter. He believed they were close to agreement but that they wanted to do more wordsmithing.

Ms. Nelson summarized the discussion and suggested they direct staff to come up with a draft definition of a *de minimus* home occupation that would not rise to the level of needing a permit.

Mr. Lanfear related that Marion County had a section in its code that listed uses allowed in any zone.

Ms. Nelson surmised that the task force did not want to make changes to major or minor home occupations in the Rural Residential zone. She summarized the discussion; the task force would indicate to the Board of County Commissioners that they were only moving this item to the back.

## **BREAK**

The task force took a 15-minute break at 4:15 p.m.

Mr. Cornacchia had to leave the meeting for another obligation.

## **DISCUSSION ITEM: DEVELOPED AND COMMITTED EXCEPTIONS**

Ms. Nelson reviewed the staff notes from the previous meeting regarding developed and committed exceptions. Her notes had differed from staff notes in that she had thought that the task force had determined to leave Goal 2, Policy 12 as it was because Mr. Lanfear had pointed out that the language referred to how designations were changed and not whether they were authorized.

In response to a question from Ms. Nelson, Ms. Wilkinson explained that the change in language for LC 16.400(8)(a)(i) sought to draw a distinction between the processes to follow between minor and major amendments.

Mr. Lanfear recommended that they look at the definitions of ‘major’ and ‘minor’ to figure out what fell under them and what the change would do to that.

Members talked about whether they were ready to sum up the proposal and write a report explaining the minority view. There was some discussion of the board order and the consensus process.

Ms. Driscoll hoped that everyone would be open to changing their minds about this item. She averred that if they wanted to reach the goal of a 20 percent reduction in greenhouse gases they should take into account every piece of property. She thought they had only barely scratched the surface of the dialogue on this.

Mr. Emmons cited the Seavey Loop area as one that had a lot of developed and committed lands. He said it was farm and forest land. He did not think eliminating developed and committed exceptions was “just an inconsiderate proposal.”

Mr. Reeder pointed out that the Seavey Loop properties were already zoned as developed and committed. He said the proposal on the table was to disallow future developed and committed exceptions. He was not certain how the Seavey Loop example furthered the discussion.

Mr. Sisson wanted to see more details from Goal One Coalition. He stressed his commitment to hearing all sides and keeping an open mind in the decision-making process.

Ms. Nelson surmised that Mr. Just’s motivation had to do with limiting housing on rural lands because of the larger goals around urbanization, global warming, and peak oil. She suggested that

## LANE COUNTY LAND USE TASK FORCE REPORT

### JANUARY 2010 GOAL ONE COALITION PROPOSAL REGARDING GREENHOUSE GAS EMISSIONS AND ENERGY CONSUMPTION

Goal of Proposal: Incorporate policies that reflect the need to take actions aimed at reducing greenhouse gas emissions and fossil fuel energy consumption throughout the county

Consensus on Goal? See discussion

Consensus on Proposal? No

Consensus on Alternate Proposal? Yes

Potential Measure 49 claims? Yet to be determined

Measure 56 notice required? Yet to be determined

#### Discussion:

This item was considered at the July 19 and July 26, 2010 LCLUTF meetings. The author of this proposal is Jim Just of Goal One Coalition, a Lane County Land Use Task Force (LCLUTF) member. The Goal One proposal is attached to this report as Exhibit A.

The Goal One proposal was not discussed by the LCLUTF except in general terms. This was partially due to the author's absence (he apparently resigned from the LCLUTF part way through the July 19 meeting). There were also time constraints due to the July 30 deadline for completion of the LCLUTF's work.

The portion of the Goal One proposal entitled "I. NEED FOR ACTION" notes the recent state legislation regarding greenhouse gas emissions and the impending decline of oil supplies, and recommends that the Board of Commissioners "incorporate policies that reflect the need to take actions aimed at reducing greenhouse gas (GHG) emissions and fossil fuel energy consumption throughout the county." This statement appears to describe the Goal One proposal's intentions.

LCLUTF members were in general agreement about the desirability of addressing the changes in state policy regarding GHG emissions, but did not agree that comprehensive plan amendments, such as those contained in the Goal One proposal, were appropriate at this time.

*LCLUTF members indicated their level of consensus<sup>1</sup> on the Goal One proposal as follows:*

Ms. Driscoll: 3

Mr. Emmons: 4

Mr. Reeder, Ms. Nelson, Mr. Cornacchia, Mr. Kloos, Mr. Sisson, Mr. Evans, Mr. Lanfear: 6

An alternate proposal was advanced by the Chair in her role as a representative of 1000 Friends of Oregon. The alternate proposal was modified during the July 26 meeting in response to comments

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<sup>1</sup> Consensus Ratings:

- 1 Whole-heartedly agree
- 2 It's a good idea and the person could support the idea of bringing resources toward the motion
- 3 The person was supportive but not likely to want to put resources towards the motion
- 4 The person has reservations but would stand aside
- 5 The person had serious concerns, but could live with the motion
- 6 The person could not participate in the decision and would actively work to block it.



from LCLUTF members, and is attached as Exhibit B. Discussion on the alternate proposal was also limited, due to time constraints. However, a letter explaining the rationale for the 1000 Friends of Oregon proposal was provided to the LCLUTF in advance of the July 26 meeting; it is attached as Exhibit C. The alternate proposal does not propose code or comprehensive plan amendments. Rather, it is a proposed Board Order that expresses support for the state-mandated GHG scenario planning process, and for funding additional scenario planning and coordination with local MPO efforts.

*LCLUTF members indicated their level of consensus on the alternate proposal as follows:*

Mr. Mann, Ms. Nelson, Mr. Sisson, Mr. Evans, Mr. Lanfear: 1

Mr. Reed, Mr. Cornacchia, Ms. Driscoll: 2

Mr. Emmons: 4

Submitted this 30th day of July, 2010, by:



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Mia Nelson, Chair

Attachments: Exhibit A: Original proposal prepared by Goal One  
Exhibit B: Alternate proposal prepared by 1000 Friends of Oregon  
Exhibit C: Letter from 1000 Friends of Oregon explaining alternate proposal

## EXHIBIT A

### GOAL ONE PROPOSAL

#### Urbanization Oversight Project

#### Implementing Comprehensive Plan Amendments

##### I. NEED FOR ACTION

Pursuant to ORS 195.025 (Regional coordination of planning activities) the governing body of Lane County (Lane County Board of Commissioners) has the responsibility and authority for:

- (1) “coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county.”

##### **Global Warming/climate change**

In 2007, HB 3543 (Global Warming Actions) was adopted and codified in ORS 468A.205 (Policy; greenhouse gas emissions reduction goals). The statute established the following greenhouse gas emissions reduction policies and goals:

- “SECTION 2. (1) The Legislative Assembly declares that it is the policy of this state to reduce greenhouse gas emissions in Oregon pursuant to the following greenhouse gas emissions reduction goals:
- (a) By 2010, arrest the growth of Oregon’s greenhouse gas emissions and begin to reduce greenhouse gas emissions.
  - (b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels.
  - (c) By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.
- (2) The Legislative Assembly declares that it is the policy of this state for state and local governments, businesses, nonprofit organizations and individual residents to *prepare for the effects of global warming and by doing so, prevent and reduce the social, economic and environmental effects of global warming.* (emphasis added)

In 2009, the legislature adopted HB 2186. The bill has multiple objectives, including creating a “Metropolitan Planning Organization Greenhouse Gas Emissions Task Force for purpose of studying alternative land use and transportation scenarios that reduce greenhouse gas emissions from certain motor vehicles in areas served by metropolitan planning organizations” and “ Directs task force to recommend legislation to specified interim legislative committees.”

These 2007 and 2009 legislative actions indicate an effort on the part of the state legislature to focus state and local governments on the need to significantly reduce greenhouse gas emissions state wide over the period ranging from 2010 – 2050.

##### **Peak Oil**

The State of Oregon's Energy Plan 2007-2009 recognizes that annual oil production will level out and begin a long-term decline.<sup>2</sup> Production will no longer be able to meet growing demand as it has in the past. Peak oil encompasses the idea of peak natural gas and peak coal as well. Peak oil is going to happen, although the timing is uncertain, and that it could cost Oregon's economy dearly. To have substantial impact, mitigation options must be initiated more than a decade in advance of peaking.

While alternatives will be used, they are unlikely to fully replace oil and natural gas. Oil and natural gas (and coal) have been cheap and easy to produce, but the alternatives will be difficult and expensive to produce. As a result, more capital and energy will have to be allocated to produce alternative sources.

In addition, many of the alternatives produce electricity rather than liquid transportation fuels. It could take decades to replace a significant amount of declining oil and natural gas reserves. In addition to alternative supplies, it will be necessary to increase the efficiency of the energy used. With the peak of world oil production approaching, major improvements in the energy efficiency of cars, homes and buildings, lights, appliances, and industrial processes are needed. In addition, major savings can be achieved by walking and bicycling more often, changing land use patterns to reduce transportation needs, and investing more in long-distance rail and mass transit.

**Planning coordination to meet greenhouse gas emissions and energy goals.**

The LC Board of Commissioners, exercising its county-wide coordinating responsibility and authority pursuant to ORS 195.025, intends to amend the Rural Comprehensive Plan (RCP) to incorporate policies that reflect the need to take actions aimed at reducing greenhouse gas emissions and fossil fuel energy consumption throughout the county.

**II. PROPOSED PLAN AMENDMENTS**

**A. New Goal 2: Land Use Planning plan and zone designations at p. 20**

<u>Plan Designation</u>	<u>Zone Classification</u>	<u>Abbrev.</u>
Lands of Critical Importance	Lands of Critical Importance Comb.	/LCI, RCP

**B. New Goal 2: Land Use Planning Policy 28 at p. 22**

Lane County shall exercise its coordinating responsibility and authority pursuant to ORS 195.025 to achieve county greenhouse gas emissions and fossil fuel energy conservation goals throughout the county.

**C. New Goal 3: Agricultural Lands policy at Comprehensive Plan p. 24**

17. Global warming and dwindling supplies of fossil fuels are of increasing concern. Agricultural lands deemed to be of critical importance for ensuring food security for Lane County citizens and

<sup>2</sup> <http://www.oregon.gov/ENERGY/docs/EnergyPlan07-09.pdf>

the ecological integrity of Lane County shall be inventoried as Lands of Critical Importance with the intent of protecting such lands in perpetuity.

**C. New Goal 4: Forest Lands policy at Comprehensive Plan p. 28**

16. Global warming and dwindling supplies of fossil fuels are of increasing concern. Forest lands deemed to be of critical importance for ensuring forest products security for Lane County citizens and the ecological integrity of Lane County shall be inventoried as Lands of Critical Importance with the intent of protecting such lands in perpetuity.

**D. New Goal 6: Air Quality policies at Comprehensive Plan p. 43**

7. It is the policy of Lane County to reduce greenhouse gas emissions in Lane County pursuant to the following greenhouse gas emissions reduction goals:

(a) By 2010, arrest the growth of Lane County's greenhouse gas emissions and begin to reduce greenhouse gas emissions.

(b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels.

(c) By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.

8. It is the policy of Lane County that local governments, businesses, nonprofit organizations and individual residents prepare for the effects of global warming and by doing so, prevent and reduce the social, economic and environmental effects of global warming.

9. Lane County shall develop standards for identifying, evaluating and minimizing the adverse greenhouse gas emissions consequences of major land development and permit requests so as to meet Lane County's emissions reduction goals.

**E. New Goal 12: Transportation policy at Comprehensive Plan p. 54**

5. Global warming and dwindling supplies of fossil fuels are of increasing concern. Inefficient development patterns within UGBs can result in premature and excessive expansion of UGBs, with adverse consequences for greenhouse gas emissions and energy consumption. Lane County shall fulfill its responsibility under ORS 195.025(1) for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, so as to minimize adverse transportation system impacts and meet Lane County's greenhouse gas emissions and energy consumption goals and objectives.

**F. New Goal 13: Energy Conservation policies at Comprehensive Plan p. 55**

4. Lane County realizes that peak oil – which encompasses the idea of peak natural gas and peak coal as well - is going to happen, although the timing is uncertain; and that it could cost Oregon's economy dearly. To have substantial impact, mitigation options must be initiated well in advance of peaking.

5. Lane County embraces the objectives of the Oil Depletion Protocol and will strive to reduce oil consumption in Lane County by at least the world depletion rate.<sup>3</sup>

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<sup>3</sup> <http://www.oildepletionprotocol.org/theprotocol>

6. Lane County shall develop standards for identifying, evaluating and minimizing the adverse energy consequences of major land development and/or building permit requests.

7. It is the policy of Lane County that, by 2020, all of Lane County's electricity shall be generated by sources other than coal-fired plants unless all carbon emissions from coal-fired plants are permanently sequestered.

**G. New Goal 14: Urbanization policy at Comprehensive Plan p. 58**

18. Global warming and dwindling supplies of fossil fuels are of increasing concern. Inefficient development patterns within UGBs can result in premature and excessive expansion of UGBs, with adverse consequences for greenhouse gas emissions and energy consumption. Lane County shall fulfill its responsibility under ORS 195.025(1) for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, so as to meet Lane County's greenhouse gas emissions and energy conservation goals and objectives.

**EXHIBIT B**

**ALTERNATE 1000 FRIENDS OF OREGON PROPOSAL**

**RECOMMENDED BOARD ORDER ON LANE COUNTY GHG REDUCTION  
JULY 2010**

WHEREAS, Lane County recognizes that global climate change is occurring in large part due to greenhouse gas emissions, and that the impact of climate change on Lane County residents and the County's rich natural resources, wildlife, farms and forests, water quality and quantity, and built environment could be profound and adverse; and

WHEREAS, the most cost effective and long lasting method to reduce transportation-related greenhouse gases, and to have significant co-benefits on individual health, economic well-being, and government spending, is through integrating land use and transportation to reduce individual driving, also known as reducing vehicle miles traveled (VMT); and

WHEREAS, the scenario planning, selection, and implementation process outlined in SB 1059 and the MPO Task Force Report, undertaken with significant and meaningful public involvement, is the best way to achieve VMT reduction, and hence GHG reduction, in the Central Lane MPO region and throughout the County and region;

IT IS HEREBY RESOLVED, that Lane County supports the scenario planning process described in SB 1059 and HB 2001, and as funding is available will provide the technical and staffing support necessary for the products described in those two bills. Lane County will work closely with the Central Lane MPO in doing this, and will ensure that the scenario planning includes a thorough analysis of rural and outlying community development patterns.

IT IS FURTHER RESOLVED, that Lane County hereby commits to effective implementation of the chosen GHG emission reduction scenario.

IT IS FURTHER RESOLVED, that Lane County supports achieving the requirements of HB 2001 and SB 1059 on or before the dates provided in that legislation, and will work with the Central Lane MPO and other local cities and governments to do so.

IT IS FURTHER RESOLVED, that Lane County recognizes that in order to positively impact global climate change, local and regional efforts to reduce GHG emissions must be accompanied by similar efforts on a national and international level.



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July 23, 2010

Lane County Land Use Task Force  
Lane County Land Management Division Staff  
Lane County Board of Commissioners  
125 East 8th Avenue  
Eugene, OR 97401

Re: Greenhouse Gas Emissions Planning

Dear Task Force Members, Planning Staff and Commissioners:

At the July 19 Lane County Land Use Task Force meeting, I pledged to provide 1000 Friends of Oregon's recommendations regarding state and local greenhouse gas (GHG) planning. I hope these materials are helpful in considering what Lane County can and should do about reducing GHG emissions. Fortunately, the same actions that reduce GHG also provide co-benefits such as reduced dependence on expensive and environmentally damaging petroleum products, improved health, more enjoyable lifestyles, individual economic well-being, and reduced government spending. Even if curtailing GHG emissions were not a concern, these actions would still be worthwhile due to these valuable co-benefits. Good planning is an investment in Lane County's future that will pay off handsomely as our world continues to change, and energy cost and climate concerns become major controlling factors in our lives.

#### Background

In 2007, the Oregon Legislature adopted HB 3543 (ORS 468A.205). It established the following statewide greenhouse gas emissions reduction goals:

By 2010, arrest the growth of Oregon's greenhouse gas emissions and begin to reduce greenhouse gas emissions.

By 2020, achieve greenhouse gas levels that are 10% below 1990 levels.

By 2050, achieve greenhouse gas levels that are at least 75% below 1990 levels.

The Legislature also declared that "it is the policy of this state for state and local governments, businesses, nonprofit organizations and individual residents to prepare for the effects of global warming and by doing so, prevent and reduce the social, economic and environmental effects of global warming."

In 2009, the Oregon Legislature adopted HB 2001, the Jobs and Transportation Act. Among other things, that legislation required the Portland and Eugene/Springfield areas to take certain steps towards reducing greenhouse gases from the transportation sector.



Celebrating Thirty-five Years of Innovation

HB 2001 requires the following steps:

For the Portland area metropolitan planning organization (MPO), which is Metro, HB 2001 requires the following:

The Land Conservation and Development Commission (LCDC) will adopt rules by June 1, 2011 on the GHG reduction from cars and light trucks that Metro must achieve by 2035. The calculation must take into account improved vehicle technologies and fuels.

By January 1, 2012, Metro will develop two or more alternative land use and transportation “scenarios” that accommodate planned population and employment growth while achieving that GHG reduction target.

Metro will then adopt one scenario.

Local governments within Metro’s jurisdiction shall update their comprehensive plans and land use regulations to implement the scenario.

ODOT and DLCD will provide technical assistance and grant support. If sufficient funding is not available, local jurisdictions will not be required to comply.

For the Eugene/Springfield MPO (Lane Council of Governments, LCOG), HB 2001 requires the following:

ODOT and Metro will provide LCOG the modeling assistance to undertake its own development of alternative land use and transportation scenarios to reach the GHG reduction target from cars and light trucks.

Local governments within LCOG must choose one scenario, but they are not required to implement it.

In 2009, the Oregon Legislature also adopted HB 2186. HB 2186 established the Metropolitan Planning Organization Greenhouse Gas Emissions Task Force. Among other things, the MPO Task Force was directed to:

Evaluate the development of land use and transportation scenarios that reduce greenhouse gas (GHG) emissions caused by motor vehicles weighing 10,000 pounds or less by 2035, to meet the reduction goals state in ORS 468A.205<sup>1</sup>, while accommodating planned population and employment growth and any anticipated reduction in emissions that might result from improved vehicle technologies and fuels.

Recommend legislation to the 2010 interim Legislative Assembly establishing a process for adoption and implementation of plans for reducing GHG emissions caused by vehicles weighing 10,000 pounds or less, including a schedule for the planning process and an estimate for required funding, for all the MPO regions in the state. This includes the Central Lane MPO.

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<sup>1</sup> 468A.205 Policy; greenhouse gas emissions reduction goals. (1) The Legislative Assembly declares that it is the policy of this state to reduce greenhouse gas emissions in Oregon pursuant to the following greenhouse gas emissions reduction goals:

(a) By 2010, arrest the growth of Oregon’s greenhouse gas emissions and begin to reduce greenhouse gas emissions.

(b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels.

(c) By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.



The MPO Task Force completed its work and submitted its final report to the 2010 Interim Legislative session. That resulted in legislative passage of SB 1059.

SB 1059 establishes the technical and policy framework and process for the non-Metro MPO regions to conduct scenario planning and implement a land use/transportation scenario that reduces GHG from the car and light vehicle sector. However, further legislation and funding will be needed to implement this in each MPO region and member jurisdiction. SB 1059 requires the following:

The Oregon Transportation Commission shall adopt a statewide transportation GHG reduction strategy to aid in achieving the emissions reduction goals in ORS 468A.205. The OTC shall take into account state and federal programs, policies, and incentives on reducing GHG emissions.

LCDC, after consulting with ODOT, local governments, and MPOs, shall adopt rules identifying a reduction target for GHG emissions caused by motor vehicles with a gross vehicle weight rating of 10,000 pounds or less, to be met by each region served by a MPO.

ODOT and DLCD, in consultation with MPOs, state agencies, local governments, and stakeholders, will establish guidelines for developing and evaluating alternative land use and transportation scenarios that reduce greenhouse gas emissions.

ODOT and DLCD will create a toolkit to assist local governments in developing and executing actions and programs to reduce GHG emissions from the light vehicle sector. It shall include:

- Actions and programs local governments can implement on the local and regional level to reduce GHG emissions.
- Information about the potential effectiveness of the actions and programs in reducing GHG emissions.
- Information about the cost-effectiveness of the actions and programs,
- Estimates of the time required to implement the actions and programs.
- Guidelines for best management practices for analyzing and executing the actions and programs.
- Modeling and analysis tools that MPOs and local government may use to assess GHG emissions reduction benefits from land use and transportation actions.
- Public education tools about GHG emission reduction targets and strategies.

ODOT and DLCD shall report to the 2011 Legislature on the local government costs and potential sources of funding to prepare and select land use and transportation scenarios.

ODOT and DLCD shall report to the 2013 Legislature on progress made on:

- An OTC statewide transportation strategy to reduce GHG emissions.
- The guidelines for best management practices for reducing GHG from the light vehicle sector.
- The toolkit.
- Recommendations on how to meet the GHG emissions reduction targets.
- Whether additional actions or a different framework is necessary to carry out the GHG reduction goals set forth in ORS 468A.205.

## Recommendations

1000 Friends of Oregon believes that the most cost effective and long lasting method to reduce transportation-related greenhouse gases, and to have significant co-benefits on individual health, economic well-being, and government spending, is through integrating land use and transportation to reduce individual driving, also known as reducing vehicle miles traveled (VMT). We see the scenario planning, selection, and implementation process outlined above, undertaken with significant and meaningful public involvement, as the best way to achieve VMT reduction, and hence GHG reduction, in the Central Lane MPO region and throughout the County and region.

The scenario planning process is a valuable opportunity to explore and understand how different land use and transportation improvement choices affect VMT. Many of the rural development issues we discussed over the past months have involved differing, and often conflicting, assumptions about VMT. The scenario planning process is Lane County's chance to ask and answer the important questions many of us have wondered about.

**Funding is a primary concern.** Lane County must include adequate resources in the next long-range planning budget to fully participate in the MPO planning process. The County should ensure that the MPO process includes analysis of development patterns across the entire county, including isolated rural development and outlying communities, by making clear requests and providing direction, and by contributing additional funding and/or staffing if necessary.

Once this planning is done, and a scenario is selected, Lane County must implement the scenario by making changes in its land use and transportation policies. Again, adequate funding will be critical. We think the County should commit now to this implementation, and start budgeting for the long-range planning efforts that will surely be needed for many years into the future.

We also believe that the GHG reduction targets adopted by the State of Oregon should be considered *minimal* standards, not optimal standards, and that Lane County should strive to meet these goals well before the statutory deadlines.

1000 Friends of Oregon is committed to assisting local governments as they move through the GHG scenario planning process and we hope to work closely with Lane County on this critically important issue in the coming years and months.

Suggested language for a board order supporting good GHG planning is attached for review.

Sincerely,



Mia Nelson  
Willamette Valley Advocate  
220 East 11th Avenue, Suite 5  
Eugene, OR 97401

Attachment: *Recommended Board Order on Lane County GHG Reduction - July 2010*