W. 6. a.

LANE COUNTY LAND USE TASK FORCE REPORT

GOAL 1 CODE COMPLIANCE PROPOSAL

Goal: To provide staff with additional leverage for resolving code compliance issues.

Consensus on Goal? Yes

Original Proposal: Deem applications incomplete if an "alleged violation" exists on the property.

Alternate Proposal: Formalize existing staff practice of examining the property file when a land use or permit application is received, and referring any unresolved compliance actions to the compliance officer for further action.

Consensus on Alternate Proposal? Yes

Potential Measure 49 claims? No

Measure 56 notice required? No

Discussion:

This issue was considered and resolved at the April 5, 2010 meeting. Members were given a 9-page memo from Jeff Towery, dated March 21, 2007, that discusses the compliance program in detail. There was general agreement that a critique of the operations of the compliance program was beyond the scope of the LCLUTF's duties, and that some of the concerns raised by members and citizens could not be addressed with code changes.

Compliance officer Jane Burgess spent an hour explaining the county's current practices. Complaints follow a three-stage process, beginning with a "Request for Voluntary Correction," a letter sent after the county becomes aware of a potential violation via a complaint or staff observation. Ms. Burgess indicated that most issues are resolved after sending this letter. If the recipient does not respond to the letter, staff then decides whether or not to take it to the next stage, an "Order to Comply." The bar is set higher for this second stage, in terms of proof, than for the initial stage. This may then progress to imposition of penalties.

Lane Code Section 5.017(12) already has a provision whereby the County may withhold permits or licenses if a penalty goes unpaid. However, this is the final stage of the enforcement process. The author's goal was to provide a tool that could be utilized prior to this point. This code provision also does not address land use applications, which are legally different than permits and licenses.

Concerns raised with the original proposal included the vagueness of the term "alleged violation," the need to be reasonably certain that a violation exists before taking punitive action, the statutory requirements for processing times on land use applications, and the need for a nexus to exist between the compliance issue and the application request in order to withhold a finding of completeness or an approval.

There was considerable discussion about the appropriate point in the compliance process to take actions involving delaying or withholding applications. Staff told the group that compliance actions are usually resolved quickly once an Order to Comply has been issued, since penalties are the next step and there are strong provisions already in place for enforcing those. Therefore, the group agreed that hinging action on the Order to Comply was likely too late in the process to make much difference. On the other hand, the group felt that delaying or withholding permits at the Request for Voluntary Correction stage would be premature since staff reported that the level of proof needed to initiate that first step was fairly low.

Thus, it appeared it would be difficult to find an equitable, timely and clearly defined triggering event for withholding a permit in the manner originally envisioned by the author.

Members were told of a fairly recent change in staff practice, whereby when a land use or permit application is received, the property file is checked for outstanding compliance actions, including Requests for Voluntary Compliance. If any unresolved compliance actions are found, staff refers the matter to the compliance officer for further action. Although the referral does not directly impact the application process nor guarantee any certain outcome, this practice has apparently been helpful in resolving outstanding compliance problems.

The group decided that formalizing staff's current practice was the most favorable way to resolve this issue, since it would trigger action in the early phase of the compliance process, but without the concerns of tying application approvals to unproven allegations or unrelated problems, or of delaying land use applications and risking mandamus actions.

A new Lane Manual section is proposed, as follows:

5.013 Coordination of Compliance and Permitting.
Upon receipt of a land-use application or other permit application, Land Management Division staff shall review the document and determine if there are any compliance actions pending as to the subject property. If pending compliance actions are found, Land Management Division staff shall refer the application to Compliance Program staff.

Submitted this 4th day of May, 2010, by:

Mia Nelson, Chair

LANE COUNTY LAND USE TASK FORCE REPORT

1/26/10 GOAL ONE COALITION PROPOSAL TO ELIMINATE "DEVELOPED AND COMMITTED" EXCEPTIONS

Goal of Proposal: To eliminate developed and committed (D & C) zone changes

Consensus on Goal? No. 2 in favor (Just, Driscoll), 2 undecided (Emmons, Nelson), and the remaining 6 members opposed (Evans, Cornacchia, Reeder, Sisson, Kloos, Lanfear).

Consensus on Proposal? Not attempted, although opponents raised specific concerns with the language of the original proposal. See discussion.

Original Proposal: Changes to Lane Code & RCP to eliminate D & C zone changes

Consensus Alternate Proposal: None

Potential Measure 49 claims? Yet to be determined

Measure 56 notice required? Yet to be determined

Discussion:

This proposal was considered at the April 19, April 26 and May 3 Lane County Land Use Task Force (LCLUTF) meetings. The author of this proposal is Jim Just of Goal One Coalition, a LCLUTF member. The proposal's goal is to eliminate future developed and committed (D & C) zone changes throughout Lane County, a straightforward objective. However, as the discussion progressed over three meetings, it became clear that members had complex reasons for supporting or opposing the proposal, and in some cases these extended beyond the issue of D & C zone changes to larger policy and societal concerns. This report addresses only those issues specific to the D & C process. The chair will make a separate report to the Board regarding the discussions on more general policy and societal concerns, which are still ongoing.

The D & C rezoning process has been rarely used in Lane County, with 22 applications approved over the last 25 years, totaling 227 acres. The attached compilation by LCLUTF member James Mann lists these applications and some details for each. It was asserted that about 10% of the area that was zone changed was justified because the parcel had pre-existing development, with the remaining 90% justified because the parcel was "irrevocably committed" to nonresource uses (i.e. surrounded by other exception lands).

The author argued that most properties that would qualify for D & C have likely already been zone changed because generally, such exceptions are based on development authorized prior to application of statewide goals in 1975. The author uses this argument to support of the proposal. The author also argued that the D & C process was designed to be temporary, and that since few people are asking for D & C zone changes, it was unlikely that anyone would care if it were eliminated.

However, other members said that this is the best reason for keeping it; there are still a few "Rip Van Winkles" out there who haven't yet realized this was a possibility, and they shouldn't be penalized from coming forward later than others. In response to this, one member asserted that most of the time, D & C is done by a new owner after purchasing the property from the prior owner who didn't know it was a possibility; the prior owner's ignorance enables the new owner to realize a large profit. This assertion was challenged and the question of how long landowners had owned their property before requesting a zone change was not resolved. Another member said that the questions of who profits and by how much are irrelevant to the discussion about this proposal.

A majority of members felt that if it were true that few would use this process in the future, there seemed little reason to get rid of it. They said that abuse hasn't been proven, and that D & C is a rarely used and legitimate tool, as evidenced by the fact that only 227 acres had been zone changed in the last 25 years. It was also pointed out that a recent LCDC rule change required the zoning for D & C land to be set at a minimum of 10 acres, which would further reduce the number of properties eligible for this process.

Opponents of the proposal also said that since D & C was authorized by state statute, ORS 197.732(2), it might not be legal - or proper - to remove it as an option. Others disputed this, saying that the county had the right to be more restrictive than state law. One member stated that the D & C exception process is necessary because it is an "escape value" to protect Lane County from a "regulatory takings" lawsuit. If the D & C exception process was eliminated it could leave some properties without any economically viable use in violation of the Fifth Amendment to the United States Constitution.

The author said that in his experience, properly contested D & C applications are almost always overturned at LUBA. Because of this, he believes that allowing property owners to pursue D & C is ultimately a waste of resources for opposing groups such as Goal One Coalition, and also for applicants. Some members felt that participants' expenses were not a valid reason for making this change, and also questioned the statistics on the number of overturned decisions. While the author declined to provide supporting evidence, citing the difficulty of the research that would be needed, he pointed out that in his work with Goal One Coalition, he had been involved in many D & C appeals and had firsthand knowledge of the situation.

There was extensive discussion on why D & C applications might be approved or denied. Some said that since the requirements are so narrow, not many qualify for a D & C exception; failures could be due to applicants not doing a good enough job on the application, or just the difficulty of surviving a LUBA appeal without an initial remand. The author agreed that the standards for D & C were high, however he said that he said that there were essentially no situations where the property truly met those standards. He said that since this was not an objective test, if the quality of the experts and application are good enough, applicants could win approvals that are unjustified. However, when the application is properly contested, those approvals can almost always be overturned on appeal.

The LCLUTF did not further research the question of what proportion of challenged D & C applications ultimately fail to win approval. It appears to the chair that it would be difficult for the Board to verify the author's contention that there is no such thing as a valid D & C exception. **It is the opinion of the majority of the LCLUTF that the D & C process, as it has been used in Lane County for the last 25 years, is not being abused and has not resulted in the mistaken rezoning of lands that should properly have remained in resource designations. The majority believes that it is an important but rarely used tool that should be retained.**

Some members were willing to critique the author's suggested changes to the RCP and Lane Code, despite their opposition to the proposal. However, this critique does not constitute a consensus alternate proposal. Suggestions were:

- Goal 2, Policies 9 and 11: Change the date from January 1, 2010 to the date of adoption.

- Goal 2, Policy 12: Leave the existing language in place because eliminating this provision would create a hole in the plan regarding how changes in designation for existing D & C lands should be made.

- Goal 3, Policy 7: Leave the existing language in place because it simply explains why certain lands have been designated D & C in the past.

- LC 16.400(8)(a)(i): The proposed change is not recommended because it would change the definition of a minor plan amendment, making more applications be minor as opposed to major amendments, resulting in a decrease in fee revenues.

The LCLUTF also did not discuss the issue of whether Measure 49 would be implicated. Likewise, the LCLUTF also did not discuss the issue of whether Measure 56 notice would be required if the proposal was eventually adopted. The LCLUTF anticipates discussing these two issues as they relate to all of the proposals and will include such in the final report to the Board.

The author indicated that he did not object to any of the suggested changes. **The chair recommends that in the event the Board decides to advance this proposal to public hearing, staff be asked to revise the language in accordance with the above suggestions.**

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

Mia Nelson, Chair

Micheal M. Reeder, Vice Chair

Attachments: Three-page summary of D & C approvals by James Mann

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Eugene, Oregon 97405-0902
Telephone: (541) 514-3051
Email: jamannllc@comcast.net

April 8, 2010

Kent Howe, Planning Director
C/O Land County Land Management Division
125 East 8th Ave.
Eugene, OR 97401

Re: Development and Committed Lands Exceptions Policy
Lane County Land Use Task Force

Dear Kent,

This report is for distribution to the Lane County Land Use Task Force and provides information about the number and nature of owner initiated applications for developed or committed lands exceptions which Lane County has processed and approved from 1984 to December 31, 2009 (i.e. 25 years). The attached page contains detailed information about these applications that is summarized as follows:

- 23 total applications received (.92 applications received per year)
- 22 total applications approved (.88 applications approved per year)
- 227.35 total acres involved in the 22 approved applications (10.33-acre average per application)

Development or committed lands exceptions must comply with strict State rules and regulations for such exceptions. In general, in order for a developed or committed lands exception application to be approved, the subject property must be almost totally and lawfully developed for non-farm and non-forest uses or there must be substantial evidence that attempts by the owner to conduct farm or forest uses on the subject property are impracticable because of actual conflicting uses that have originated from nearby properties not zoned for farm or forest uses.

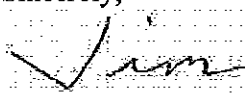
Below is a list of the legislative work Lane County has completed in the last 25 years to create and adopt developed or committed lands exceptions for rural properties in unincorporated areas:

- The 1984 adoption of the Lane County Rural Comprehensive Plan (RCP) and exceptions via Ordinance 884.
- The 1984 to 1989 corrections to the RCP including adoption of additional exceptions via Errors and Omissions Ordinances 888, 903, 911, 937 and 969.

- The 1989 LCDC remand of acknowledgment of the developed or committed lands exceptions and Lane County's subsequent two-year effort to create and adopt supplemental exception findings via 43 Board Orders and Ordinance 992 that rezoned a small number of properties to forest or farm zones.
- The 2001 to 2006 - Periodic review update of the RCP and zoning that included the adoption of a small number of developed or committed lands exceptions via Ordinances 1168, 1203 and 1226.

I hope that this information will be helpful.

Sincerely,



James A. Mann LLC

Attachment

All Lane County Ordinances
Initiated by Property Owners for
Dev. and Comm. Exceptions

#	Ordinance No.	Date Enacted	D&C Goal Exception	From Designat.	From Zoning	To Designat.	To Zoning	Acres
1	908	2/12/1986	Goal 4	Forest	F-2	Public Facility	PF	5
2	900A	5/11/1988	Goal 4	Forest	F-2	Rural Residential	RR10	10.75
3	956	9/28/1988	Goal 3	Agriculture	E-40	Industrial	M-2	8.08
4	968	6/21/1989	Goals 3&4	Forest	F-2	Rural Residential	RR-5	5.15
5	1025	10/28/1992	Goal 4	Forest	F-1	Rural Commercial	C-R	1.14
6	1036	5/19/1993	Goal 4	Forest	F-2	Rural Residential	RR-5	2
7	1040	6/30/1993	Goal 3	Agriculture	E-30	Rural Residential	RR-5	9
8	1060	8/10/1994	Goal 3	Agriculture	E-40	Rural Residential	RR-5	4.77
9	1063	10/12/1994	Goal 3	Agriculture	E-40	Rural Residential	RR-5	*3 lots* 19.08
10	1076	8/23/1995	Goal 4	Forest	F-2	Rural Residential	RR10	9.99
11	1072	9/20/1995	Goals 3&4	Agriculture	E-30	Rural Residential	RR-5	17.34
12	1094	1/29/1997	Goals 3&4	Forest	F-2	Rural Industrial	M-2/SR	11.11
13	1095	2/5/1997	Goal 4	Forest	F-1	Rural Residential	RR2	0.2
14	1096	3/19/1997	Goals 3&4	Agriculture	E-40	Rural Residential	RR-5	13.13
15	1102	4/22/1998	Goals 3&4	Agriculture	E-40	Rural Residential	RR-5	21.92
16	1112	5/13/1998	Goals 3&4	Agriculture	E-40	Rural Residential	RR-5	5.01
17	1105	6/2/1998	Goals 3&4	Agriculture	E-40	Rural Residential	RR2	5 ?
18	1111	8/5/1998	Goals 3&4	Forest	F-2	Rural Residential	RR5/SR	0.25
19	1127	12/9/1998	Goals 3&4	Forest	F-2	Rural Residential	RR-2/SR	12.5
20	1141	8/4/2000	Goals 3&4	Agriculture	E-40	Rural Residential	RR-5	32.54
21	1148	3/14/2001	Goals 3&4	Agriculture	E-25	Rural Residential	RR2	13.39
22	1166	2/6/2002	Goals 3&4	Forest	F-2	Rural Residential	RR-5	20

SUMMARY

TOTAL D&C ACRES FROM AGRICULTURE:	149.26	ACRES REZONED TO RR:	202.02
TOTAL D&C ACRES FROM FOREST:	78.09	ACRES REZONED TO M-2:	19.19
TOTAL D&C ACRES:	227.35	ACRES REZONED TO C-R:	1.14
AVERAGE D&C PROPERTY SIZE:	10.33	ACRES REZONED TO PF:	5

James A. Mann LLC
April 8, 2010

LANE COUNTY LAND USE TASK FORCE REPORT

1/26/10 GOAL ONE PROPOSAL TO ELIMINATE "NON-RESOURCE" PLAN AMENDMENT/ZONE CHANGES

Goal of Proposal: To eliminate non-resource plan amendment/zone changes

Consensus on Goal? No. See discussion for positions of each member

Consensus on Proposal? Not attempted

Original Proposal: Changes to Lane Code & RCP to eliminate non-resource plan/amendment zone changes

Consensus Alternate Proposal: None

Potential Measure 49 claims? See 6/7/10 opinion by Stephen Vorhes

Measure 56 notice required? See 6/7/10 opinion by Stephen Vorhes

Discussion:

This issue was considered at the May 3 and May 10 meetings. The author of this proposal is Jim Just of Goal One Coalition, a LCLUTF member. The proposal's goal is to eliminate future non-resource plan amendment/zone changes throughout Lane County. As with the previously considered D & C proposal, some of the discussion regarding support or opposition of the proposal extended to larger policy and societal concerns. This report addresses only those issues specific to the non-resource process. The chair will make a separate report to the Board regarding the discussions on more general policy and societal concerns, which are still ongoing.

The non-resource plan amendment/rezoning process has been rarely used in Lane County, with five applications approved over the last ten years, totaling 179 acres, as shown by the attached compilation by county staff. To obtain approval, among other requirements, applicants must show that the subject property does not meet the definitions of "agricultural land" or "forest land" as found in statewide planning Goal 3 and Goal 4:

Goal 3: Agricultural Lands Definition (OAR 660-015-0000(3))
Agricultural land in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use

patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

Goal 4: Forest Lands Definition (OAR 660-015-0000(4))
Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

The author of the proposal believes that non-resource plan amendment/zone changes are too easy to obtain, allowing lands that should properly be retained as resource lands to be re-designated. He believes that essentially, all an applicant needs to do is find an agricultural economist willing to say that the land cannot be farmed profitably, and a forest consultant to say that the land cannot support commercial timber production. He said that although the definition of resource land includes all lands necessary to enable farm or forest practices on surrounding lands, or maintain soil, air, water and fish and wildlife resources, in actual practice these factors have not been enough to prevent a plan amendment/zone change to non-resource. The author of the proposal cited an example from Josephine County in which a non-resource designation was approved despite the proximity of a class 1 stream that contained endangered salmonids. He said that the Department of Land Conservation and Development was considering enhancing the forest land criteria to provide more weight to these factors in future plan amendment/zone change decisions.

Regarding the five applications that have been approved over the past ten years, the author of the proposal stated that Goal One Coalition had fought every one. In response, another member said that nearly all five applications had been thoroughly vetted and nearly all of them had been appealed to the Land Use Board of Appeals. However, there was no evidence presented to the LCLUTF regarding the merits of these five applications, nor did the group discuss any of the applications. It appears to the chair that it would be difficult for the Board to verify the author's contention that these five applications were wrongly decided.

Staff members were asked if any applications had been denied, since no denials were shown on the attached compilation. Staff responded that generally, people do not make a resource land plan amendment/zone change application when staff recommends against it. Task force members were told that staff members discourage such applications on an almost daily basis.

Despite the dearth of recent non-resource plan amendment/zone changes in Lane County, the author of the proposal believes that the potential for future

improper non-resource plan amendment/zone changes is high. He cited the widespread use (and in his opinion, abuse) of this process in some other counties as evidence of what might occur here in the future. Supporters of the proposal believe that all land is important and should be retained in resource land designation because the effects of non-resource rezonings are cumulative.

However, the fact that only five applications have been submitted and only five applications have been approved in ten years, affecting only 179 acres out of Lane County's 2,835,000 acres of resource land, alongside the absence of proof that individual cases have been decided wrongly, was cited by the majority as evidence that Lane County is processing these proposals carefully and that no abuses of the process are occurring.

A majority also believes that the non-resource option should be retained to provide a mechanism to allow farm- or forest-zoned parcels to be redesignated and rezoned for rural residential use when it is shown that they are, in fact, non-resource lands.

The task force members indicated their level of consensus[1] as follows:

Mr. Just: 1
Mr. Emmons: 2
Ms. Driscoll: 3
Ms. Nelson: 4
Mr. Kloos: 5
Mr. Evans, Mr. Belknap, Mr. Reeder, Mr. Sisson, Mr. Lanfear: 6

Submitted this 22nd day of June 2010, by:

Mia Nelson, Chair

Micheal M. Reeder, Vice Chair

Attachment: Non-resource decision summary prepared by Lane County staff

[1] 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.

Background Info...cont.

BCC Decision on Non-Resource Plan Amendement/Zone Changes

2000 - 2009

File No.	Acres		From	BCC Decision	Decision Date
PA 01-5881	24		F-2	Approved	06/05/2002
PA 01-5875	30		E-30	Approved	06/23/2004
PA 04-5738	71		F-2	Approved	09/13/2005
PA 03-6037	1	(portion of larger parcel)	F-2	Approved	01/25/2006
PA 05-6249	52		F-2	Approved	12/06/2006
	179				

LANE COUNTY LAND USE TASK FORCE REPORT

1/26/10 GOAL ONE COALITION PROPOSAL REGARDING F-1 to F-2 ZONE CHANGES

The author of the original proposal is Jim Just of Goal One Coalition, a Lane County Land Use Task Force (LCLUTF) member. Mr. Just explained his original proposal in a January 26, 2010 memorandum to Commissioner Fleenor entitled "Needed RCP Goal 4: Forest Land policy amendments" and in an undated memorandum entitled "Goal One Coalition Proposals: Technical Fix and 'Big Picture' Policy Elements."

Mr. Just has subsequently withdrawn the original proposal.

This report briefly describes the LCLUTF discussion of the original proposal prior to its withdrawal and presents an alternative proposal that was developed by a subcommittee of the LCLUTF, and further refined by LCLUTF member and subcommittee member, Thom Lanfear.

Goal of Proposal: Remove ambiguity and discretion from standards necessary to allow a change in zoning from F-1 to F-2.[1]
Consensus on Goal? Yes.
Consensus on Proposal? Not applicable – no vote taken because the proposal was withdrawn by Mr. Just.
Consensus on Alternative Proposal? No.
Potential Measure 49 claims? If the original proposal was adopted by the Board, Assistant County Counsel Steve Vorhes has opined that there would likely not be any Measure 49 claims.
Measure 56 notice required? If the original proposal was adopted by the Board, Assistant County Counsel Steve Vorhes has opined that there would likely not be any Measure 56 notice required.

Discussion:

The original proposal was considered at six LCLUTF meetings (May 10th, May 17th, May 24th, June 3rd, June 7th, June 14th and June 24th). Lane County has two forest land zone designations: F1 (Nonimpacted Forest Land), a zone which does not permit any residential dwellings and F2 (Impacted Forest Land), a zone which, in limited circumstances may allow for residential dwellings. The Lane County Rural Comprehensive Plan (RCP) Goal 4 Policy 15 sets forth 'characteristics' used to determine whether forest land should be designated F1 or F2.

The goal of the original proposal is best stated by Mr. Just: "The existing 'characteristics' contain language which is imprecise and ambiguous, and their application in reaching a conclusion murky and subjective."[2] Staff provided data for

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[1] Mr. Just also expressed that he had a variety of goals including maintaining the resource and the productive capability of the forest and to achieve a purported statewide policy of the Board of Forestry of having "no net loss of wildland forest between 2009 and 2020." LCLUTF Meeting minutes, May 17, 2010, page 2. There was not consensus for these goals.
[2] Goal One Coalition Proposals: Technical Fix and 'Big Picture' Policy Elements.

the LCLUTF regarding F-1 to F-2 zone changes from 2000 to 2009. During this period, five applications were made to the Lane County Hearings Official, with two applications being approved, affecting a total of 109 acres.

The LCLUTF discussed various issues that the LCLUTF could not reach consensus on. However, because it appeared that there was consensus on the goal to clean up the language and make the process more objective, a four-member subcommittee was appointed to draft an alternative (compromise) proposal. The subcommittee developed an alternative proposal that included specific, objective, approval criteria that was agreed to in concept by all members of the LCLUTF. The LCLUTF directed staff to draft language that would incorporate the specific, objective approval criteria to the RCP and the Lane Code.

However, at the June 14th LCLUTF, member Mr. Emmons withdrew his support for the alternative proposal. Mr. Emmons stated that he withdrew his support after further reflection and review of the zoning maps provided at past LCLUTF meetings. He believed that the alternative proposal would permit more zone changes than under the current regulations. Ms. Driscoll also withdrew her support based on Mr. Emmon's expressed concerns. Mr. Just also withdrew his support and explained that his withdrawal of support was because there was not consensus on his proposal that newly re-zoned F-2 parcels be ineligible for new dwellings. Mr. Emmons also expressed a desire to have the LCLUTF review the complete package of all of the proposals before indicating final votes on all of the proposals.

Although full consensus on the alternative proposal was retracted it was decided that the alternative proposal would be forwarded on to the Board based on the subcommittee's work in developing a product that attempted to achieve the original goal of the original Goal One Coalition proposal. As one of the members of the subcommittee, Thom Lanfear volunteered to refine the alternative proposal based on the previous work done by the subcommittee. For the benefit of the Board, I have attached the alternative proposal that would introduce objective criteria into the process.

Conclusion:

The original Goal One Coalition proposal was exhaustively analyzed by the LCLUTF, a subcommittee developed a compromise proposal, and ultimately no consensus was achieved. A refined alternative, objective proposal is attached for the Board's consideration.

Submitted this 23rd day of July, 2010, by:

Mia Nelson, Chair

Micheal M. Reeder, Vice Chair

Attachments: Current RCP Goal 4; F1 F2 Characteristics - Table 1; Goal 4 Policy 15 Text Alternative

GOAL 4: FOREST LANDS

1. Conserve forest lands by maintaining the forest land base and protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

   Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.

2. Forest lands will be segregated into two categories, Non-impacted and Impacted and these categories shall be defined and mapped by the general characteristics specified in the Non-Impacted and Impacted Forest Land Zones General Characteristics.

3. Forest lands that satisfy the requirements of ORS 197.247 (1991 Edition), may be designated as Marginal Lands and such designations shall also made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands ands shall be those allowed by ORS 197.247 (1991 Edition).

4. Forest operations, practices and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in the Oregon Forest Practices Act, ORS 527.722.

5. Prohibit residences on Non-Impacted Forest Lands except for the maintenance, repair or replacement of existing residences.

6. Dwellings shall be allowed in the Impacted Forest Land (F-2/RCP) Zone District as provided in OAR 660-06.

7. The minimum land division size for the Nonimpacted Forest Lands (F-I/RCP) Zone and the Impacted Forest Lands (F-2/RCP) zone shall comply with OAR 660-06.

8. New structures must comply with the Siting and Fire Safety Standards of OAR 660-06-029 and 660-06-035.

9. Recreational activities in the Park and Recreation (PR/RCP) Zone District within resource areas that are outside lands for which a built or committed exception to a Statewide Planning Goal has been taken shall be limited to those uses consistent with Statewide Planning Goals 3 and 4.

10. The effects of a projected shortfall in timber supplies within the near future are of considerable concern to Lane County. The County supports efforts by state and federal agencies in developing plans that will address the situation. The County intends to be an active, committed participant in such plan development.

11. Encourage the consolidation of forest land ownership in order to form larger more viable forest resource units.

12. Encourage the conversion of under-productive forest lands through silvicultural practices and reforestation efforts.

13. Encourage the development of assistance programs, tax laws, educational programs and research that will assist small woodland owners with the management of their forest land.

14. Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal #5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal #5. No other findings, assumptions, goal policy or other planning regulation shall be construed as additional regulation of forest management activities.

15. Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

    a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.
    b. Non-impacted Forest Land Zone (F-1,RCP) Characteristics:
        (1) Predominantly ownerships not developed by residences or nonforest uses.
        (2) Predominantly contiguous, ownerships of 80 acres or larger in size.
        (3) Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.
        (4) Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.
    c. Impacted Forest Land Zone (F-2. RCP) Characteristics:
        (1) Predominantly ownerships developed by residences or nonforest uses
        (2) Predominantly ownerships 80 acres or less in size.
        (3) Ownerships generally contiguous to tracts containing less then 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

Table 1

Tract Size	Current Zoning			F-1	F-2
> 160 ac	F-1			X	
	Other	adjacent to F-1 lands		X	
		not adjacent to F-1 lands			X
> 80 ac to 160 ac	F-1	adjacent to F-1 lands along 50% or more of the perimeter of the tract	adjacent to D+C Exception Area		X
			not adjacent to D+C Exception Area	X	
	Other	not adjacent to F-1 lands			X
		adjacent to F-1 lands along 50% or more of the perimeter of the tract		X	
		adjacent to F-1 lands along less than 50% of the perimeter of the tract	adjacent to D+C Exception Area		X
			not adjacent to D+C Exception Area	X	
80 ac or less	F-1	adjacent to Developed and Committed Area	meets Template Test OAR 660-006-0027(1)(f)		X
			does not meet Template Test OAR 660-006-0027(1)(f)	X	
		not adjacent to D+C Exception Area		X	
	Other	not adjacent to F-1 lands			X
		adjacent to F-1 lands along 50% or more of the perimeter of the tract		X	
		adjacent to F-1 lands along less than 50% of the perimeter of the tract	adjacent to D+C Exception Area		X
			not adjacent to D+C Exception Area	X	

1. For purposes of applying these criteria, Sections contain 640 acres; the Subdivision of Sections contain 160 acres in Quarter Sections and 40 acres in Quarter/Quarter Sections.

2. For purposes of applying these criteria, lands separated from the subject tract by streams with an average annual streamflow greater than 1000 cfs shall not be considered as adjacent lands.

3. F-1 parcels greater than 160 acres in size on the effective date of this ordinance shall not be eligible for rezoning to F-2.

4. Acreage applies to subject tract.

Goal 4 Policy 15 Text Alternative

15. Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non Impacted Forest Lands (F 1, RCP) or Impacted Forest Lands (F 2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion to tracts of land shall be based upon the characteristics and conditions contained in Table 1.

LANE COUNTY LAND USE TASK FORCE REPORT

1/26/10 GOAL ONE COALITION PROPOSAL REGARDING F-2 FOREST ZONE TEMPLATE DWELLINGS

The author of this proposal is Jim Just of Goal One Coalition, a Lane County Land Use Task Force (LCLUTF) member. This proposal originally consisted of items 18-27 on staff's 7/12/10 compilation entitled *Goal 1 Coalition: Revised Proposed Code Amendments.* All of those items have since been either withdrawn or revised in response to feedback from task force members. This report covers only those items that have not been withdrawn. For the modified proposals, this report does not discuss the original versions. However, copies of the original proposals were previously submitted to the Board and the Chair will submit a supplemental report covering any of the withdrawn or modified items, upon request of the Board.

A legislative draft of the proposal is attached; each item is labeled with the same numbers used in staff's 7/12 compilation.

ITEM 18

Goal of Proposal: Remove template dwellings as an allowed use on land that is re-zoned to F-2 after January 1, 2011
Consensus on Goal? No
Consensus on Proposal? Not attempted
Potential Measure 49 claims? Yet to be determined
Measure 56 notice required? Yet to be determined

Discussion:

This item was considered at the June 21 and June 28, 2010 LCLUTF meetings. The goal is to remove template dwellings as an allowed use on land that is re-zoned to F-2 after January 1, 2011. Currently, it is sometimes possible to re-designate and/or re-zone an unbuildable F-1 or EFU parcel to F-2, and gain the right to site a dwelling. While this proposal would not affect the re-zoning process itself, it would largely remove the incentive to pursue a re-zoning since parcels re-zoned F-2 after January 1, 2011 would no longer be able to qualify for a dwelling.

The LCLUTF discussed the number of re-zonings to F-2 over the past decade. Staff provided a chart that showed five applications were processed for F-1 to F-2 re-zoning requests. Three were denied and two were approved. The cumulative effect of these two zone changes was to change 109 acres from F1-to F-2. The number of plan designation and zone changes from Farm/EFU to Forest/F-2 was not discussed.

It was noted that although there have been only two F-1 to F-2 re-zonings since 2000, there have been many more F-2 template dwelling applications: about 30-40 per year. Staff later told the LCLUTF that there are currently 7,028 F-2 parcels in Lane County. 3,470 parcels have addresses and so are presumed to have dwellings on them. 3,558 parcels are not addressed and are presumed vacant, although not all of these are buildable. It therefore appears that the majority of

template dwelling applications are made upon some of these 3,558 pre-existing vacant F-2 parcels, rather than upon parcels newly rezoned to F-2.

To some members, the dearth of F-1 to F-2 re-zonings (two in the past decade) indicated that there could be no problem and the proposed change was therefore unnecessary. Others felt that since there were so few re-zonings, the proposed change could be adopted with little effect on landowners.

There were also deep disagreements on "property rights" implications. Some members pointed out that if a person held property that was now F-1 but it had the characteristics of F-2 land, then they should be allowed to site a dwelling once they completed their zone change to F-2, and not be penalized merely because they had waited to do the F-2 zone change. Others thought that if a person was not currently zoned F-2 then they could not have any reasonable expectation of being allowed to build later on; this is not the same as taking away a right they currently have, this is a prospective right that may never come to fruition.

The task force members indicated their level of consensus[1] as follows:

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

ITEM 19

Goal of Proposal: Create a new definition for the word "contiguous" for purposes of applying the template dwelling standards in LC 16.211(5).
Consensus on Goal? No
Consensus on Proposal? Not attempted
Potential Measure 49 claims? Yet to be determined
Measure 56 notice required? Yet to be determined

Discussion:

This item was considered at the June 21, June 28 and July 7 2010 LCLUTF meetings. The purpose is to create a new definition for the word "contiguous" for purposes of applying the template dwelling standards in LC 16.211(5). The new definition would not apply elsewhere within Lane Code.

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[1] 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 proposed new definition for contiguous is "adjacent or touching." The current definition is found in LC 16.090 and LC 13.010:

"Contiguous. Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access-public, County, State or Federal street) shall not be considered contiguous."

The new definition would remove the requirement that two parcels must share an eight-foot common boundary, in order for them to be deemed contiguous. This definition is used in LC 16.211(5) to determine whether or not adjacent parcels make up a "tract." Only one dwelling per tract is permitted. Some members objected to the proposed change because they felt the eight-foot common boundary was needed to permit a landowner to travel from one parcel to the other. They said that if the two parcels could not be managed as a unit then it didn't make sense to consider them to be a "tract."

The new definition would also remove the prior definition's requirement that tracts separated by a road not be considered contiguous. However, since the new definition requires parcels to be "adjacent or touching" in order to be deemed contiguous, and parcels on either side of a road clearly are not, there may be no practical effect to this change.

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

Mr. Just, Mr. Emmons, Ms. Nelson: 1
Mr. Reeder: 3
Mr. Kloos, Mr. Evans, Mr. Cornacchia, Mr. Sisson, Mr. Lanfear: 4

ITEM 20

Goal of Proposal: Clarify that qualifying dwellings must be permanent
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 June 7 and June 14, 2010 LCLUTF meetings. The members unanimously agreed to modify the Lane Code to conform with OAR 660-06-0027(1)(f).

ITEM 21

Goal of Proposal: Clarify how the center of a parcel is determined
Consensus on Goal? No

Consensus on Proposal? Not attempted
Potential Measure 49 claims? Yet to be determined
Measure 56 notice required? Yet to be determined

Discussion:

This item was considered at the June 7, June 14 and June 21, 2010 LCLUTF meetings. The purpose of the proposal is to clarify how the center of a parcel is determined, when applying the template test. There is more than one way to determine the center, and current staff practice has been that if the method appears reasonable, the applicant's proposed method is accepted.

The proposal would require the center to be determined "either mathematically or by the pin test." The so-called "pin-test" physically determines the centroid of the parcel, also known as the geometric center. It is done by finding the point at which a cardboard cut-out of the parcel will balance on a pin.

The centroid can also be derived a number of other ways, including mathematically with computer software, or with other physical tests. The LCLUTF heard from other members about a method involving hanging a cut-out of the parcel vertically from a pin, drawing a vertical line on the cut-out, repeating this a number of times, then noting the point of intersection of all the lines.

While the proposal appears in some ways to define center as meaning "centroid," there are other "mathematical" ways to determine the center. A task force member presented an alternate method, whereby various lines were drawn, transecting the parcel, and the middle of each line was calculated. The intersections of these midpoints were deemed to be the center. Since this method could be said to be "mathematical," it could possibly be allowed under the proposed code amendment.

Staff reported that there hasn't yet been a disagreement over the computation of the center, in the context of an application, and many members took that fact as proof there was no problem needing to be solved. A LUBA case was presented that confirmed the centroid, as physically determined via the "pin test," was acceptable. However LUBA did not rule that other methods are unacceptable.

LUBA also noted that the centroid of a parcel can be outside the parcel boundaries, such as with a horseshoe shape. LUBA did not rule on whether or not a center point located outside the parcel would be acceptable.

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

Mr. Just, Mr. Emmons: 1
Ms. Driscoll, Ms. Nelson: 2
Mr. Reeder, Mr. Kloos, Mr. Evans, Mr. Cornacchia, Mr. Sisson, Mr. Lanfear: 6

ITEM 23

Goal of Proposal: Prevent tracts extant on January 1, 2011 from ever qualifying for more than one template dwelling, despite future ownership changes
Consensus on Goal? No
Consensus on Proposal? Not attempted
Potential Measure 49 claims? Yet to be determined
Measure 56 notice required? Yet to be determined

Discussion:

This item was considered at the June 28 and July 7, 2010 LCLUTF meetings. State and local law allows only one dwelling per lot, parcel or tract. However, the lots or parcels making up a tract may be sold to different entities with each parcel independently having the possibility to qualify for a dwelling (other tests must also be met). The purpose of the proposal is to prevent multi-parcel tracts from ever qualifying for more than one template dwelling, despite future ownership changes. It would lock in the definition of a "tract" to mean the configuration that existed on January 1, 2011.

Evidence was provided to the LCLUTF that multi-parcel tracts are commonly sold to the landowner's relatives and controlled companies, and then template dwelling permits are obtained on each one. Members discussed whether or not owner-company and husband-wife combinations could properly be considered different owners. Members also discussed whether selling multi-parcel tracts to different owners to qualify additional dwellings was within the intent of the Legislature when it passed HB3661 in 1993 authorizing template dwellings.

Mr. Just asserted that this issue had not been discussed in the Legislature's record of proceedings. He also provided some quotations and arguments that, in his opinion, demonstrated that the Legislature had not intended to allow the practice. Some members agreed with Mr. Just that the practice appeared to contrary to the Legislature's intent, and was an inadvertent loophole that should be remedied.

This viewpoint was disputed by other members. LCLUTF member Thom Lanfear provided evidence to the LCLUTF that the Land Conservation and Development Commission considered this matter in 1998 and declined to limit forest template dwelling to one dwelling per tract through rulemaking. Additionally, Mr. Dale Riddle, a principal author of HB3661, provided legislative history showing that the Legislature adopted the bill knowing that it would not limit tracts to only one dwelling, if the constituent parcels were sold to different owners. Mr. Riddle's letter contained quotations taken from discussions of the issue on the floors of the House and Senate. In both cases, the same question was asked: "If I owned two adjacent properties which met wood lot standards, would I be entitled to two wood lot dwellings?" The answer provided in both the Senate and the House was essentially the same: "No. However, if you would convey one of the parcels to another person prior to the application for a dwelling, both parcels would be entitled to a dwelling."

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

Mr. Just, Mr. Emmons: 1

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

ITEM 24

Goal of Proposal: Clarify how a rectangular template is aligned with a road or stream
Consensus on Goal? No
Consensus on Proposal? Not attempted
Potential Measure 49 claims? Yet to be determined
Measure 56 notice required? Yet to be determined

Discussion:

This item was considered at the June 7, June 14 and June 21, 2010 LCLUTF meetings. The purpose of the proposal is to clarify how a rectangular template, one-quarter wide and one mile long, is to be aligned with an adjacent road or stream. The template is used in some tests that determine eligibility for a dwelling under this section of the code. Staff told the LCLUTF that less than 10% of all template dwelling applications use the rectangular template test; the remainder use a square template aligned in a different manner. The current code mirrors state law, and requires that the template be aligned "to the maximum extent possible." The proposal adds this definition:

"A rectangular template is aligned to the maximum extent possible with the road when the two corners on the long side of the rectangle nearest to the road or stream are equidistant from the center of the road or stream. If the road or stream terminates before reaching an end of the rectangle template, the rectangular template shall be aligned with a line running from the center of the end of the road or stream to a point at the center of the road or stream either one mile along the road or stream or at its point of termination."

The issue does not appear to have been litigated, but staff provided a 2007 appeal to the Hearings Official; the applicant's proposed alignment was sustained. Many LCLUTF members pointed to this as proof that there was no problem that needed to be addressed.

There were also concerns raised that the proposed language was confusing and impossible to apply in some situations. The majority believes that this is necessarily a subjective determination, and that it would be difficult, perhaps impossible, to write a set of objective instructions that covered all situations. Early in the discussion, when the proposal was somewhat different than the final version, one member brought taxlot maps containing unusual road configurations. Task force members challenged the proposal's author, Mr. Just, to demonstrate how his proposal could work in circumstances where the road was very curvy, or where it ended prior to reaching the end of the template. The Chair asked Mr. Just to return to the group with the taxlot maps, and revised language if necessary, and demonstrate how to apply his proposal to those odd situations. While Mr. Just did subsequently amend his proposal, he did not make any demonstrations for the group. It appears to the

Chair that there are still circumstances in which the proposed language may prove impossible to apply.

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

Mr. Just: 1
Ms. Driscoll: 2
Mr. Emmons: 3
Ms. Nelson: 4
Mr. Reeder, Mr. Kloos, Mr. Evans, Mr. Cornacchia, Mr. Sisson, Mr. Lanfear: 6

Additional Item

The LCLUTF also agreed by consensus to an additional change that is not numbered on staff's compilation of changes. It is marked with an asterisk on the attached draft. The change deletes this provision: "A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway."

Submitted this 23rd day of July, 2010, by:

Mia Nelson, Chair

Micheal M. Reeder, Vice Chair

Attachments:

DRAFT: Revised Lane Code 16.211 Impacted Forest Lands Zone
Email cover sheet and two-page untitled memo from Jim Just regarding HB3661
Dale Riddle's 7/2/10 letter regarding HB3661

No. 20 No. 18

No. 18, 20 (5) Template Dwelling. One single-family dwelling ~~or manufactured dwelling~~ is allowed **on a lot or parcel zoned F-2 as of January 1, 2011** subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

(a) For purposes of LC 16.211(5):

No. 23 **(i) "Tract" means one or more contignous lots or parcels in the same ownership as of January 1, 2011.**

No. 19 **(ii) "Contiguous" means adjacent or touching.**

(iii) "Centered on the center of the snbject tract" means centered on the center

No. 21 **of the subject tract as established either mathematically or by the "piu" test.**

iv A rectangular template is aligned to the maximum extent possible with the

No. 24 **road when the two coruers ou the long side of the rectangle nearest to the road or stream are equidistant from the ccuter of the road or stream. 1f the road or stream termiuates before reaching an end of the rectangle template, the rectangular template shall be aligned with a line running from the center of the end of the road or stream to a point at the center of the road or stream either one mile along the road or stream or at its point of termination.**

No. 20 **(b)** ~~(a)~~ The tract upon which the dwelling ~~or manufactured dwelling~~ will be located has no other dwellings or manufactured dwellings on it. ~~As used in LC 16.211(5), "tract" means one or more~~

No. 19 ~~contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.~~ *

No. 20 **(c)** ~~(b)~~ The lot or parcel upon which the dwelling ~~or manufactured dwelling~~ will be located was lawfully created.

No. 20 **(d)** ~~(c)~~ The lot or parcel upon which the dwelling ~~or manufactured dwelling~~ will be located:

(i) Is predominantly composed of soils that are capable of producing 0 to 49 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least three other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the eenter of the subjeet traet that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or pareels within urban growth boundaries shall not be used to satisfy the cligibility requirements in LC 16.211(5)(c)(i)(aa) above.

No. 20 (bb) At least three dwellings ~~or manufactured dwellings~~ existed on January 1, 1993, **and continue to exist** on the other lots or parcels deseribed in LC 16.211(5)(c)(i)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(i)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings ~~or manufactured dwellings~~ shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle; or

(ii) Is predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least seven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(e)(ii)(aa) above.

No. 20

(bb) At least three dwellings ~~or manufactured dwellings~~ existed on January 1, 1993, **and continue to exist** on the other lots or parcels described in LC 16.211(5)(c)(ii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(ii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings ~~or manufactured dwellings~~ shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle; or

(iii) Is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least eleven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January I, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(iii)(aa) above.

No. 20

(bb) At least three dwellings ~~or manufactured dwellings~~ existed on January 1, 1993, **and continue to exist** on the other lots or parcels described in LC 16.211(5)(c)(iii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(iii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings ~~or manufactured dwellings~~ shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle.

No. 20

(e) ~~(d)~~ Approval of a dwelling ~~or manufactured dwelling~~ shall comply with the requirements in LC 16.211(5)(d)(i) through (iv) below:

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

No. 20

(f) ~~(e)~~ Prior to land use clearance of a building permit for the dwelling ~~or manufactured dwelling~~, when the lot or parcel on which the dwelling ~~or manufactured dwelling~~ will be located is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(6), "Exhibit A," shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

(i) Shall be irrevocable, unless a statement of release is signed by the Director;

(ii) May be enforced by the Department of Land Conservation and Development or by Lane County;

(iii) Shall, together with a map or other record depicting any tract which does not qualify for a dwelling, be maintained in the Department records and be readily available to the public; and

(iv) The failure to follow the requirements of LC 16.211(5)(e) above shall not affect the validity of the transfer of property or the legal remedies available to the buyers of the property which is the subject of the covenants, conditions and restrictions required by LC 16.211(5)(e) above.

(g) ~~(f)~~ Land use approval of a permit described in LC 16.211(5) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(5)(f) above may be made and approved pursuant to LC 14.700(2).

(h) ~~(g)~~ The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

From: WILKINSON Sarah W <Sarah.WILKINSON@co.lane.or.us>
Subject: **"Tract" Legislative History**
Date: June 29, 2010 9:07:58 AM PDT
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1 Attachment, 28.5 KB

Task Force Members,

At yesterday's meeting there was discussion of the legislative history of the term "tract," as used in HB 3661. Attached you will find an overview of the legislative history courtesy of Jim Just. If you have any questions, please give me a call or send me an email.

Best,

Sarah

Sarah W. Wilkinson
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Just HB 366....doc (28.5 KB)

Template Dwellings and HB 3661

Summary of legislative history regarding the meaning of "tract" in the context of template dwellings

OAR 660-06-028 (1990 edition) authorized, on forest lands, "a dwelling not related to forest management". The dwelling had to be located on a parcel lawfully created before adoption of the rule. OAR 660-06-028(5). In addition, a certain number of parcels had to fall all or partially within a 160-acre template centered on the center of the subject parcel (3, 7, or 11 in western Oregon, and 7 or 11 in eastern Oregon, depending on soil productivity). OAR 660-06-028(7).

The idea of importing the "template" concept into statute, of imposing a "template" on a tract for purposes of counting dwellings to determine whether the subject tract should qualify for a dwelling, first arose in July 1993 in the hearings before the Senate Agriculture and Natural Resources Committee on HB 3661 on July 26, during the discussion of large-tract dwellings. The concept was that if forest operations and practices on the land would remain "unimpacted" by an additional dwelling, the dwelling could be allowed. [See July 26 Minutes, pp. 20 – 26]

The large-tract dwelling provisions that were ultimately adopted provided for a dwelling to be approved under two circumstances: where contiguous acres constituting the tract met the acreage standard; and where non-continguous acreage under the same ownership met a higher acreage standard. It is significant to note that, under the "contiguous tract" standard, the statute does not require nonrevocable deed restrictions to be filed on individual lots or parcels constituting the tract that are not to contain the large-tract dwelling. It is possible to interpret the statutory language to allow the qualifying tract to later be broken up, and even reconfigured so as to site other dwellings including large-tract dwellings and template dwellings. However, this result seems clearly contrary to the intent of the legislature.

The template dwelling provisions that ultimately became law first surfaced on July 29, 1993 and was quickly approved "in concept" by the committee. The concept was to center a 160-acre square or rectangular template on the subject "tract", and count the number of "parcels" that were "caught" within the template. If the qualifying number of parcels fell all or partially within the template, and if those "caught" parcels contained the required number of dwellings, the area was considered to already be "impacted" by dwellings and an additional "template" dwelling could be approved. [See July 29 Minutes, p. 2.] It is significant that the legislature specified that the subject "tract" was to be considered rather than "parcel" as in the administrative rule.

On July 30, 1993 the committee had amended draft language in front of it and discussed the issue of the "creeping template." The Minutes quote Ann Squires:

> "As I believe the discussion went forward, we were talking about whether the template could spin and I used the term "but it doesn't walk." The

> purposed of saying "it doesn't walk" was that you take a snap shot at the present time and we discussed using the January 1, 1993 date[.] * * * But you take the snap shot not and things that happen in the future, whether they are dwellings or an exception area that gets more parcels, don't create the ability to take that template and get the next parcel and the next parcel and the next parcel qualifying. That was a very important part of the concept that you have to meet both the parcel and the dwelling standards under the snap shot today."

The remarks of Senator Bunn express his interpretation of the implications of the language:

> "I think what we have done is if there is a legally created parcel that legally created parcel is not eligible under this if it did not exist on this date. I don't think that was any part of the intent. Even if you don't have the creeping, crawling or spinning template, if you have a legally created parcel that is created after January 1, 1993, this language would deny you the ability to use that test even based upon the dwellings that existed on January 1, or the parcels that existed on January 1, 1993. Am I right, Dick? It does two things. We deny the use of newly created parcels in the template but we also deny the ability to use the template on a parcel created after January 1, 1993. This language wasn't in the –A88 amendments. I do remember a concern to prevent extra houses as they are added from becoming a factor. I don't remember discussions to deal with the parcels. That is why I was surprised to see this."

The following discussion confirms that the issue was not discussed in the work group negotiations. However, the discussion indicates that the parties concerned did not feel it was an important issue, because the 80-acre minimum parcel size, the restrictions on new parcels would have no significant impact. See July 30 Minutes, p. I5.

The revised language, requiring that lots or parcels to be considered existed on January 1, 1993, was adopted in the final bill.

The record of the proceedings does not include any explicit discussion of the possibility of a "tract" being broken up into its constituent lots or parcels so as to allow the individual lots or parcels could each qualify for a template dwelling. However, the language in the bill requiring that the tract not already contain a dwelling and that deed restrictions be established on the remainder of the constituent lots or parcels, together with the legislative history, evidence the legislative intent that the tract be fixed as of the time of enactment.

SENECA JONES TIMBER COMPANY

July 2, 2010

Lane County Land Use Task Force:

Re: "Tract" Legislative History (HB 3661)

Dear Task Force Members:

I am in receipt of a document titled "HB 3661, Summary of Legislative History Regarding the Meaning of 'Tract' in the Context of Template Dwellings" authored by Jim Just. Mr. Just concludes from his review of the legislative history of HB 3661 that tract be fixed "at the time of enactment" of HB 3661 for purposes of determining an owner's ability to cite a template dwelling on his or her property. This is not accurate nor does the legislative history support this conclusion.

HB 3661 was adopted by the legislature and signed into law by the Governor in 1993. I was the principle author of HB 3661. I drafted the original Bill which passed the House of Representatives and I personally took part in all negotiations concerning all amendments to the Bill which were passed in the Senate, including the template dwelling provisions which are the subject of Mr. Just's research.

In Mr. Just's document, he quotes testimony from Anne Squier, Governor Barbara Roberts' Natural Resource Advisor, and Senator Jim Bunn. Neither quote supports Mr. Just's position. In the quote attributed to Ms. Squier, she did not speak to the issue of whether the lot, parcel or tract upon which the template dwelling was proposed to be sited had to be in existence on January 1, 1993. Instead, Ms. Squier is speaking to the issue of whether the neighboring dwellings which form the justification for the template dwelling had to be in existence on January 1, 1993.

In contrast to the testimony of Anne Squier, the quote cited by Mr. Just by Senator Bunn speaks directly to the issue. Senator Bunn states that it was his belief that it had been agreed by the work group that dwellings built after January 1, 1993, could not be used to justify new dwellings under the template test, but he did not believe that

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parcels created after 1993, could not be built upon if they otherwise qualified for a template dwelling. As Mr. Just quotes Senator Bunn in his paper, Senator Bunn states:

> "I think what we have done is if there is a legally created parcel that legally created parcel is not eligible under this [the –A93 Amendments] if it did not exist on this date. I don't think that was any part of the intent. ***This language wasn't in the –A88 amendments. I do remember a concern to prevent extra houses as they are added from becoming a factor. I don't remember discussions to deal with the parcels. That is why I was surprised to see this." [Emphasis added.]

In other words, to the extent that the amendments before the committee (the –A93 Amendments) did not allow template dwellings on legal parcels that were created after 1993, this did not conform to Senator Bunn's understanding of the agreement of the work group.

Mr. Just may be correct that the template dwelling first came to the public's attention at a Senate hearing before the Agriculture and Natural Resources Committee on July 26, 1993. What Mr. Just may not know was that the template dwelling had been the subject of intense negotiations for over a month before it was ever discussed in the Senate Committee. Those negotiations took place in a work group created by the respective chairs of the House Committee on Natural Resources, Ray Baum, and the Senate Committee on Agriculture and Natural Resources, Ron Cease. The last meeting of the work group took place on July 30, 1993. In attendance were Dick Benner (DLCD), Mike Rupp (DLCD), Ron Eber (DLCD), Anne Squier (Governor Roberts' Natural Resource Advisor), Kevin Birch (DOF), Senator Joyce Cohen, Senator Jim Bunn, Representative Ray Baum, Mike Evans (Land Use Planning Consultants) Kent Howe (Lane County), and myself (on behalf of the Speaker of the House, Larry Campbell). The primary purpose of the meeting was to come to final resolution of the final details of the small wood lot dwelling (which later became known as the template dwelling). At the last moment, Ms. Squier had expressed reservations about allowing the template to spin on its axis. There were also certain details that needed to be resolved concerning the use of the rectangular template. After intense negotiations, it was confirmed by the work group that the template would be allowed to spin upon its axis. There were no changes in the other key negotiated elements of the template test. The neighboring lots or parcels, and homes, necessary to justify a template dwelling had to be in existence on January 1, 1993, and the lot, parcel or tract upon which the template dwelling was proposed to be constructed did not have to be in existence as of any particular date. Sue Hanna, legislative counsel, was not present at the meeting. Someone at the meeting, I do not recall, but probably Dick Benner or Anne Squier, was instructed to go

over the details of the meeting with Ms. Hanna, so she could incorporate those details into the amendments of HB 3661 to be discussed in committee later that afternoon.

Later that afternoon, Chairman Cease reconvened the Senate Committee on Agriculture and Natural Resources to go over the final details of the agreement of the work group. These amendments were contained in the –A93 amendments to HB 3661. (See tape recording, Senate Committee on Agriculture and Natural Resources, July 30, 1993, Tape 277, Side A, at 184.) Sue Hanna presented to the committee all changes that had been made to the –A88 amendments by the –A93 amendments. The –A88 amendments had been the document from which the work group had negotiated the final details of the template dwelling earlier that morning.

The –A93 amendments had inserted the requirement that the lot or parcel upon which the template dwelling would be located had to be in existence as of January 1, 1993. Specifically, the words "that existed on January 1, 1993," were added to Section 4(6)(a). See relevant portions of HB 3661–A93 (page 7, line 29) enclosed with this letter. This was brought to the attention of the committee by Ms. Hanna, and strongly opposed by members of the work group, including Senator Bunn, Representative Baum and Mike Evans. As a result, the committee directed Ms. Hanna to remove the language that she had inserted into the –A93 amendments that would have required the lot or parcel upon which the template dwelling would be located to have been in existence as of January 1, 1993. If Mr. Just had provided the full text of the committee hearing, instead of only selected portions, this would have been obvious to the reader. Set out below are relevant portions of the committee hearing:

> "HANNA: ***On page 7 line 29, there was a question that arose about the "creeping Template." I talked with the Committee Administrator and he said the purpose of the discussion, he thought it had been agreed upon that those parcels had to exist on January 1, 1993. That is what I bring to your attention.
>
> "SENATOR BUNN: I did not have that understanding. I think we may have talked about dwelling existing, but I don't think we had all dealt with parcels existing on that date.
>
> "BENNER: Mr. Chairman, Dick Benner for the Department. I think Senator Bunn is correct***.

"SQUIER: As I believe the discussion went forward, we were talking about whether the template could spin and I used the term "but it doesn't walk." The purpose of saying "it doesn't walk" was that you take a snapshot at the present time and we discussed using the January 1, 1993, date because that is when the counties have keyed their records for purposes of small-scale resource rules, but it doesn't matter to me whether it is January 1, 1993, or what. But you take the snapshot now and things that happen in the future, whether they are dwellings or an exception area that gets more parcels, don't create the ability to take that template and get the next parcel, and the next parcel, and the next parcel qualifying. That was a very important part of the concept that you have to meet both the parcel and dwelling standards under the snapshot today.

"SENATOR BUNN: I don't recall it that way, but I am also concerned about another part. I think what we have done is, if there is a legally created parcel, that legally created parcel is not eligible under this if it did not exist on this date. I don't think that was any part of the intent. Even if you don't have the creeping, crawling or spinning template, if you have a legally created parcel that is created after January 1, 1993, this language would deny you the ability to use that test even based upon the dwellings that existed on January 1, or the parcels that existed on January 1, 1993. Am I right, Dick? It does two things. We deny the use of newly created parcels in the template, but we also deny the ability to use the template on a parcel created after January 1, 1993. This language wasn't in the –A88 amendments. I do remember a concern to prevent extra houses as they are added from becoming a factor. I don't remember discussions to deal with the parcels. That is why I was surprised to see this.

"MIKE EVANS: Chair Cease, thank you. Mike Evans for the record. This issue was not discussed in the negotiations. We were given the opportunity to work with Ann Squier, members of the Department of Forestry, Department of Land Conservation and Development. We went into a meeting with one purpose–to negotiate a settlement. We were not entirely happy with the –A88 version, however, we used that version. We looked at the concerns others had. We came up with a negotiated settlement based on that language and based on additional language. In that we compromised. We all spoke to issues during the several sessions we have had had, working groups and whatnot–issues that were of concern with us. Whenever you give concessions on one hand, then you expect some return on the other side, and it is a balancing so it works for all parties. Because this is a very important factor that we were dealing with language that existed, we agreed to that language when we walked out of the

meeting. It is an important issue that it be a balanced approach. We believe it is unfair to bring it up at this point. Had we known this was an issue, we could have discussed it and settled it during the discussion session.

***

"REPRESENTATIVE BAUM: When I started walking, I don't want people inching it along. But things are going to change in the future. There will be changes in parcel sizes and minimum lot sizes throughout the years, and that will happen. We conceded the dwelling issue and froze them as of January 1, 1993. But I understood it was stationary, but things could change over time. Why is this so substantive all of a sudden? I don't see that.

***

"SENATOR BUNN: Well, I looked back at the –A88, and I think it is clear we have recognized and locked in a date for the dwellings. The parcel concern is also legitimate, but it was not addressed before. The dwelling concern was addressed and was locked into the bill in five different places. This one was not discussed. It was put in the bill in error***.

***

"SENATOR BUNN: Mr. Chair, did we just agree to remove the words "that existed on January 1, 1993"?

"SQUIER: That was the question I was just asking and I understand you're answer to be that you did not want a change from what was there in the last draft [–A88].

"SENATOR BUNN: I would like to go back to the –A88 that did not include that.

"SQUIER: What that would mean is that, in each of the parallel sections, (a), (b) and (c), the (ii) that talks about the dwellings would require the dwellings to have existed on January 1, 1993 (language on line 5 of page 8), but the language on the date in line 29 on page 7 would come out and that would be as in the draft [–A88 amendments].

"CHAIR CEASE: All right, can we do that? Let's move ahead. It's out."
Tape recording, Senate Committee on Agriculture and Natural Resources (HB 3661), July 30, 1993, Tape 276, Side B.

Later in the hearing, this issue came up again, and again the committee confirmed their intention to delete from the Bill any requirement that the lot or parcel upon which the template dwelling was to be sited had to be in existence as of any particular date:

"SQUIER: I apologize. I have not had a chance to really read this section. What I thought you were debating with respect to the walking was not a date, the date in (6) (a) with Senator Bunn, but rather the issue of whether as you examine whether the template has been fit, the dwellings "existed on January 1, 1993," and the–

"SENATOR BUNN: I think I understand the issue. There are two separate concerns. One is whether or not the parcel can ever have the template applied to it, and the second is whether there are other parcels that are counted toward that template based upon the date.

***

"SENATOR BUNN: To start with, on the question on page 7, line 29, that there isn't disagreement, do you want a motion to delete that language, or just do it by consensus? It is dealing with the newly created parcel under the minimum lot size, allowing the template to be placed on it.

"HANNA: On page 7, in line 29, it is out. I took it out and I haven't put the date in anywhere else. Do you want to go to my next point?

"CHAIR CEASE: Yes, please."
Tape recording, Senate Committee on Agriculture and Natural Resources (HB 3661), July 30, 1993, Tape 277, Side B.

The committee also reconfirmed its intention that not only the lot or parcel did not have to be in existence as of January 1, 1993, but the tract upon which the template dwelling was sited also did not have to be in existence on January 1, 1993. Shortly after the discussions above, Senator Bunn stated:

"SENATOR BUNN: We have locked in the dwelling, but not locked in the tracts for the template."
Id.

The amendments to the –A93 amendments were codified in B-Engrossed HB 3661, which was the legislative vehicle passed by the Senate on August 2, 1993, the House on August 3, 1993, and duly signed into law by Governor Barbara Roberts. I have enclosed with this letter my personal copy of B-Engrossed HB 3661, which I used in briefing the Speaker of the House on the results of our negotiations on August 2, 1993. You will note my underline on Page 5, Line 18 of Section 4(6)(a) that I made on that date, noting the location of the removal of the "January 1, 1993" language from the Bill.

I have also enclosed a copy of the relevant portions of the –A88 amendments such that, if you review the progress of the Bill, you will find that the –A88 amendments did not require the lot upon which the home would be sited to be in existence on January 1, 1993. The A--93 amendments included this requirement. And, finally, B-Engrossed HB 3661, which ultimately became law and is codified at ORS Chapter 215, reverted back to the –A88 version of HB 3661, no longer requiring the home site upon which the template home was to be sited to have to be in existence on January 1, 1993. Likewise, the tract upon which the home was to be sited did not have to be in existence on January 1, 1993. See Section 4(6)(d)(D).

The issue of whether the tract had to be in existence as of January 1, 1993, and more specifically, whether an owner could change the tract by conveyance after January 1, 1993, was discussed on both the floors of the Senate and House during the final deliberations on HB 3661. For example, Senator Stan Bunn asked the following question and received the following answer from Senator Jim Bunn (one of the carriers of HB 3661 on the Floor of the Senate):

"SENATOR STAN BUNN: Section 4, Subsection (6) of HB 3661 creates dwelling opportunities for small wood lot owners. If I owned two adjacent properties which met wood lot standards, would I be entitled to two wood lot dwellings?

"SENATOR JIM BUNN: No. The answer is no. However, if you conveyed one of the parcels to another person prior to application for a

dwelling, both parcels would be entitled to a dwelling." Tape Recording, Senate Floor Debate (HB 3661), August 2, 1993, Tape 201, Side B.

On the House Floor, Representative Marilyn Dell asked the same question of representative Baum (carrier of HB 3661 on the Floor of the House) and received the following answer:

"**REPRESENTATIVE DELL:** Section 4, Subsection (6) of the bill creates dwelling opportunities for small wood lot owners. If I owned two adjacent properties which met wood lot standards, would I be entitled to two wood lot dwellings?

"**REPRESENTATIVE BAUM:** No. However, if you would convey one of the parcels to another person prior to application for a dwelling, both parcels would be entitled to a dwelling." Tape Recording, House Floor Debate (HB 3661) August 3, 1993, Tape 229, Side A.

In summary, Section 4(6)(a) of HB 3661 (codified at ORS 215.750(1) requires lots or parcels and dwellings that form the justification for meeting the standards of the template dwelling to have been in existences of January 1, 1993. However, the lot or parcel upon which the dwelling will actually be sited does not have to be in existence as of any particular date. Likewise, Section 4(6)(d)(D) (codified at ORS 215.750(4)(d) of HB 3661) does not require the tract upon which the dwelling will be sited to have been in existence on any particular date.

I trust that you will find this useful. Please feel free to contact me at my email address or by telephone at (541) 461-6233, if you have any questions or need for further information.

Sincerely,

Dale A. Riddle
Vice President of Legal Affairs
Seneca Sawmill Company, General Partner

DAR:dme
Enclosures