

SENATE AG & NATURAL RESOURCES

Bill No. HB 3661 Pages: 58
Exhibit: A Date: 7-29-93
Presented by: Staff

HB 3661-A88
(LC 3145-1)
7/29/93 (SH/dc)

PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3661

1 On page 1 of the printed A-engrossed bill, line 2, after "ORS" delete the
2 rest of the line and delete lines 3 through 13 and insert "30.930, 30.935, 30.940,
3 92.044, 92.046, 93.040, 197.010, 197.030, 197.040, 197.065, 197.175, 197.625,
4 215.010, 215.130, 215.213, 215.236, 215.263, 215.283, 215.296, 215.317, 215.327,
5 308.372 and 451.555 and section 3, chapter _____, Oregon Laws 1993 (En-
6 rolled Senate Bill 1057); and repealing ORS 197.247, 215.214, 215.288, 215.303,
7 215.337, 527.800, 527.805 and 527.810 and sections 2 and 3, chapter _____,
8 Oregon Laws 1993 (Enrolled Senate Bill 1057), section 42a, chapter _____,
9 Oregon Laws 1993 (Enrolled House Bill 2438), and sections 1 and 2, chapter
10 _____ Oregon Laws 1993 (Enrolled House Bill 2734)."

11 Delete lines 15 through 24 and delete pages 2 through 84 and insert:

12 "SECTION 1. Sections 2 to 7, 10 and 29 of this Act are added to and
13 made a part of ORS chapter 215.

14 "SECTION 2. (1) A governing body of a county may allow the es-
15 tablishment of a single-family dwelling on a lot or parcel located
16 within a farm or forest zone as set forth in this section and sections
17 3 and 4 of this 1993 Act after notifying the county assessor that the
18 governing body intends to allow the dwelling. A dwelling under this
19 section may be allowed if:

20 "(a) The lot or parcel on which the dwelling will be sited was law-
21 fully created and was acquired by the present owner:

22 "(A) Prior to January 1, 1985; or

23 "(B) By devise or by intestate succession from a person who ac-
24 quired the lot or parcel prior to January 1, 1985.

1 “(b) The tract on which the dwelling will be sited does not include
2 a dwelling.

3 “(c) The proposed dwelling is not prohibited by, and will comply
4 with, the requirements of the acknowledged comprehensive plan and
5 land use regulations and other provisions of law.

6 “(d) The lot or parcel on which the dwelling will be sited, if zoned
7 for farm use, is not on that high-value farmland described in section
8 3 of this 1993 Act except as provided in subsections (2) and (3) of this
9 section.

10 “(e) The lot or parcel on which the dwelling will be sited, if zoned
11 for forest use, is described in section 4 of this 1993 Act.

12 “(f) When the lot or parcel on which the dwelling will be sited lies
13 within an area designated in an acknowledged comprehensive plan as
14 habitat of big game, the siting of the dwelling is consistent with the
15 limitations on density upon which the acknowledged comprehensive
16 plan and land use regulations intended to protect the habitat are
17 based.

18 “(g) The lot or parcel on which the dwelling will be sited is part of
19 a tract, and remaining portions of the tract are consolidated into a
20 single lot or parcel when the dwelling is allowed.

21 “(2) Notwithstanding the requirements of subsection (1)(d) of this
22 section, a single-family dwelling not in conjunction with farm use may
23 be sited on high-value farmland if:

24 “(a) It meets the other requirements of sections 2 to 6 of this 1993
25 Act;

26 “(b) The lot or parcel is protected as high-value farmland as de-
27 scribed under section 3 (1) of this 1993 Act; and

28 “(c) A hearings officer of the State Department of Agriculture, un-
29 der the provisions of ORS 183.413 to 183.497, determines that:

30 “(A) The lot or parcel cannot practicably be managed for farm use,
31 by itself or in conjunction with other land, due to extraordinary cir-

1 cumstances inherent in the land or its physical setting that do not
2 apply generally to other land in the vicinity.

3 "(B) The dwelling will comply with the provisions of ORS 215.296 (1).

4 "(C) The dwelling will not materially alter the stability of the
5 overall land use pattern in the area.

6 "(3) Notwithstanding the requirements of subsection (1)(d) of this
7 section, a single-family dwelling not in conjunction with farm use may
8 be sited on high-value farmland if:

9 "(a) It meets the other requirements of sections 2 to 6 of this 1993
10 Act.

11 "(b) The lot or parcel on which the dwelling will be sited is:

12 "(A) Identified in section 3 (3) or (4) of this 1993 Act;

13 "(B) Not protected under section 3 (1) of this 1993 Act; and

14 "(C) Twenty-one acres or less in size.

15 "(c)(A) The tract is bordered on at least 67 percent of its perimeter
16 by tracts that are smaller than 21 acres, and at least two such tracts
17 had dwellings on them on January 1, 1993; or

18 "(B) The tract is bordered on at least 25 percent of its perimeter by
19 tracts that are smaller than 21 acres, and at least four dwellings ex-
20 isted on January 1, 1993, within one-quarter mile of the center of the
21 subject tract. Up to two of the four dwellings may lie within the urban
22 growth boundary, but only if the subject tract abuts an urban growth
23 boundary.

24 "(4) If land is in a zone that allows both farm and forest uses and
25 is acknowledged to be in compliance with goals relating to both agri-
26 culture and forestry, the county may apply the standards for siting a
27 dwelling under either section 3 or 4 of this 1993 Act as appropriate for
28 the predominant use of the tract on January 1, 1993.

29 "(5) A county may deny approval of a dwelling allowed under this
30 section in any area where the county determines that approval of the
31 dwelling would:

1 “(a) Exceed the facilities and service capabilities of the area;
2 “(b) Materially alter the stability of the overall land use pattern in
3 the area; or
4 “(c) Create conditions or circumstances that the county determines
5 would be contrary to the purposes or intent of its acknowledged com-
6 prehensive plan or land use regulations.

7 “(6) For purposes of subsection (1)(a) of this section, ‘owner’ in-
8 cludes the wife, husband, son, daughter, mother, father, brother,
9 brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law,
10 mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent,
11 stepchild, grandparent or grandchild of the owner or a business entity
12 owned by any one or combination of these family members.

13 “SECTION 3. (1) For purposes of section 2 of this Act, high-value
14 farmland is land in a tract composed predominantly of soils that, at
15 the time the siting of a dwelling is approved for the tract, are:

16 “(a) Irrigated and classified prime, unique, Class I or Class II; or

17 “(b) Not irrigated and classified prime, unique, Class I or Class II.

18 “(2) In addition to that land described in subsection (1) of this sec-
19 tion, for purposes of section 2 of this 1993 Act, high-value farmland,
20 if outside the Willamette Valley, includes tracts growing specified
21 perennials as demonstrated by the most recent aerial photography of
22 the Agricultural Stabilization and Conservation Service of the United
23 States Department of Agriculture taken prior to the effective date of
24 this 1993 Act.

25 “(3) In addition to that land described in subsection (1) of this sec-
26 tion, for purposes of section 2 of this 1993 Act, high-value farmland,
27 if in the Willamette Valley, includes tracts composed predominantly
28 of the following soils in Class III or IV:

29 “(a) Subclassification IIIe, specifically, Bellpine, Bornstedt,
30 Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius,
31 Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hullt,

1 Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia,
2 Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton,
3 Veneta, Willakenzie, Woodburn and Yamhill;

4 "(b) Subclassification IIIw, specifically, Concord, Conser, Cornelius
5 Variant, Dayton (thick surface) and Sifton (occasionally flooded);

6 "(c) Subclassification IVe, specifically, Bellpine Silty Clay Loam,
7 Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell,
8 Quatama, Springwater, Willakenzie and Yamhill; and

9 "(d) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney,
10 Dayton, Natroy, Noti and Whiteson.

11 "(4) In addition to that land described in subsection (1) of this sec-
12 tion, for purposes of section 2 of this 1993 Act, high-value farmland,
13 if west of the summit of the Coast Range and used in conjunction with
14 a dairy operation on January 1, 1993, includes tracts composed pre-
15 dominantly of the following soils in Class III or IV:

16 "(a) Subclassification IIIe, specifically, Astoria, Hembre, Knappa,
17 Meda, Quillayutte and Winema;

18 "(b) Subclassification IIIw, specifically, Brenner and Chitwood;

19 "(c) Subclassification IVe, specifically, Astoria, Hembre, Meda,
20 Nehalan, Neskowin and Winema; and

21 "(d) Subclassification IVw, specifically, Coquille.

22 "(5) The soil class, soil rating or other soil designation of a specific
23 lot or parcel may be changed if the property owner submits a state-
24 ment of agreement from the Soil Conservation Service that the soil
25 class, soil rating or other soil designation should be adjusted based on
26 new information.

27 "(6) Soil classes, soil ratings or other soil designations used in or
28 made pursuant to this section are those of the Soil Conservation Ser-
29 vice of the United States Department of Agriculture in its most recent
30 publication for that class, rating or designation before the effective
31 date of this 1993 Act.

1 **"SECTION 4. (1) A dwelling authorized under section 2 of this 1993**
2 **Act may be allowed on land zoned for forest use under a goal pro-**
3 **tecting forestland only if:**

4 **"(a) The tract on which the dwelling will be sited is in western**
5 **Oregon, as defined in ORS 321.257, and is composed of soils not capable**
6 **of producing 5,000 cubic feet per year of commercial tree species and**
7 **is located within 1,500 feet of a public road as defined under ORS**
8 **368.001. The road shall not be a United States Forest Service road or**
9 **Bureau of Land Management road and shall be maintained and either**
10 **paved or surfaced with rock.**

11 **"(b) The tract on which the dwelling will be sited is in eastern**
12 **Oregon, as defined in ORS 321.405, and is composed of soils not capable**
13 **of producing 4,000 cubic feet per year of commercial tree species and**
14 **is located within 1,500 feet of a public road as defined under ORS**
15 **368.001. The road shall not be a United States Forest Service road or**
16 **Bureau of Land Management road and shall be maintained and either**
17 **paved or surfaced with rock.**

18 **"(2) If a dwelling is not allowed under subsection (1) of this section,**
19 **notwithstanding any other provision of law, a dwelling may be allowed**
20 **on land zoned for forest use under a goal protecting forestland if it is**
21 **sited on a tract:**

22 **"(a) In eastern Oregon of at least 240 contiguous acres except as**
23 **provided in subsection (5) of this section; and**

24 **"(b) In western Oregon of at least 160 contiguous acres except as**
25 **provided in subsection (5) of this section.**

26 **"(3) For purposes of subsection (2) of this section, a tract shall not**
27 **be considered to consist of less than 240 acres or 160 acres because it**
28 **is crossed by a public road or a waterway.**

29 **"(4) For purposes of this section, 'commercial tree species' means**
30 **trees recognized under rules adopted under ORS 527.715 for commercial**
31 **production.**

1 “(5)(a) An owner of tracts that are not contiguous but are in the
2 same or adjacent counties and zoned for forest use may add together
3 the acreage of two or more tracts to total 320 acres or more in eastern
4 Oregon or 200 acres or more in western Oregon to qualify for a dwell-
5 ing under subsection (2) of this section.

6 “(b) If an owner totals 320 or 200 acres, as appropriate, under par-
7 agraph (a) of this subsection, the owner shall submit proof of
8 nonrevocable deed restrictions recorded in the deed records for the
9 tracts in the 320 or 200 acres, as appropriate. The deed restrictions
10 shall preclude all future rights to construct a dwelling on the tracts
11 or to use the tracts to total acreage for future siting of dwellings for
12 present and any future owners unless the tract is no longer subject to
13 protection under goals for agricultural lands or forestlands.

14 “(c) The Land Conservation and Development Commission shall
15 adopt rules that prescribe the language of the deed restriction, the
16 procedures for recording, the procedures under which counties shall
17 keep records of lots or parcels used to create the total, the mech-
18 anisms for providing notice to subsequent purchasers of the limita-
19 tions under paragraph (b) of this subsection and other rules to
20 implement this section.

21 “(6)(a) In western Oregon, a governing body of a county may allow
22 the establishment of a single-family dwelling on a lot or parcel located
23 within a forest zone if the tract is composed primarily of soils that are:

24 “(A) Capable of producing 0 to 49 cubic feet per acre per year of
25 wood fiber if:

26 “(i) This tract and all or part of at least three other lots or parcels
27 exist within a 160-acre square centered on the center of the subject
28 tract; and

29 “(ii) At least three dwellings existed on January 1, 1993, on the
30 other lots or parcels;

31 “(B) Capable of producing 50 to 85 cubic feet per acre per year of

1 wood fiber if:

2 "(i) All or part of at least seven other lots or parcels exist within
3 a 160-acre square centered on the center of the subject tract; and

4 "(ii) At least three dwellings existed on January 1, 1993, on the
5 other lots or parcels; or

6 "(C) Capable of producing more than 85 cubic feet per acre per year
7 of wood fiber if:

8 "(i) All or part of at least 11 other lots or parcels exist within a
9 160-acre square centered on the center of the subject tract; and

10 "(ii) At least three dwellings existed on January 1, 1993, on the
11 other lots or parcels.

12 "(b) In eastern Oregon, a governing body of a county may allow the
13 establishment of a single-family dwelling on a lot or parcel located
14 within a forest zone if the tract is composed primarily of soils that are:

15 "(A) Capable of producing 0 to 50 cubic feet per acre per year of
16 wood fiber if:

17 "(i) All or part of at least seven other lots or parcels exist within
18 a 160-acre square centered on the center of the subject tract; and

19 "(ii) At least three dwellings existed on January 1, 1993, on the
20 other lots or parcels; or

21 "(B) Capable of producing more than 50 cubic feet per acre per year
22 of wood fiber if:

23 "(i) All or part of at least 11 other lots or parcels exist within a
24 160-acre square centered on the center of the subject tract; and

25 "(ii) At least three dwellings existed on January 1, 1993, on the
26 other lots or parcels.

27 "(c) Lots or parcels within urban growth boundaries shall not be
28 used to satisfy the eligibility requirements under this subsection.

29 "(d) A proposed dwelling under this subsection is not allowed:

30 "(A) If it is prohibited by or will not comply with the requirements
31 of an acknowledged comprehensive plan or acknowledged land use

1 regulations or other provisions of law.

2 "(B) Unless it complies with the requirements of section 5 of this
3 1993 Act.

4 "(C) Unless no dwellings are allowed on other lots or parcels that
5 make up the tract and deed restrictions established under subsection
6 (5) of this section for the other lots or parcels that make up the tract
7 are met.

8 "(D) If the tract on which the dwelling will be sited includes a
9 dwelling.

10 "(7) If the tract under subsection (6) of this section abuts a road,
11 the measurement shall be made by creating a 160-acre rectangle that
12 is one mile long and one-fourth mile wide centered on the center of
13 the subject tract and, to the maximum extent possible, along the road.

14 "(8) No dwelling other than those described in this section may be
15 sited on land zoned for forest use under a land use planning goal pro-
16 tecting forestland.

17 "SECTION 5. (1) A local government shall require as a condition
18 of approval of a single-family dwelling allowed under section 2 of this
19 1993 Act on lands zoned forestland that:

20 "(a) The property owner submits a stocking survey report to the
21 assessor and the assessor verifies that the minimum stocking re-
22 quirements adopted under ORS 527.610 to 527.770 have been met.

23 "(b) The dwelling meets the following requirements:

24 "(A) The dwelling has a fire retardant roof.

25 "(B) The dwelling will not be sited on a slope of greater than 40
26 percent.

27 "(C) Evidence is provided that the domestic water supply is from a
28 source authorized by the Water Resources Department and not from
29 a Class II stream as designated by the State Board of Forestry.

30 "(D) The dwelling is located upon a parcel within a fire protection
31 district or is provided with residential fire protection by contract.

1 “(E) If the dwelling is not within a fire protection district, the ap-
2 plicant provides evidence that the applicant has asked to be included
3 in the nearest such district.

4 “(F) If the dwelling has a chimney or chimneys, each chimney has
5 a spark arrester.

6 ~~“(G) The owner provides and maintains primary fuel-free break and~~
7 secondary break areas.

8 “(2)(a) If a governing body determines that meeting the require-
9 ment of subsection (1)(b)(D) of this section would be impracticable, the
10 governing body may provide an alternative means for protecting the
11 dwelling from fire hazards. The means selected may include a fire
12 sprinkling system, onsite equipment and water storage or other
13 methods that are reasonable, given the site conditions.

14 “(b) If a water supply is required under this subsection, it shall be
15 a swimming pool, pond, lake or similar body of water that at all times
16 contains at least 4,000 gallons or a stream that has a minimum flow
17 of at least one cubic foot per second. Road access shall be provided to
18 within 15 feet of the water's edge for fire-fighting pumping units, and
19 the road access shall accommodate a turnaround for fire-fighting
20 equipment.

21 “SECTION 6. As used in sections 2 to 6 of this 1993 Act:

22 “(1) ‘Specified perennials’:

23 “(a) Means perennials grown for market or research purposes in-
24 cluding, but not limited to, nursery stock, berries, fruits, nuts,
25 Christmas trees or vineyards; and

26 “(b) Does not include seed crops, hay, pasture or alfalfa.

27 “(2) ‘Tract’ means one or more contiguous lots or parcels under the
28 same ownership.

29 “SECTION 7. (1) Except as provided in subsection (2) of this section,
30 the following minimum lot or parcel sizes apply to all counties:

31 “(a) For land zoned for exclusive farm use and not designated

1 rangeland, at least 80 acres;

2 “(b) For land zoned for exclusive farm use and designated
3 rangeland, at least 160 acres; and

4 “(c) For land designated forestland, at least 80 acres.

5 “(2) A county may adopt a lower minimum lot or parcel size than
6 that described in subsection (1) of this section by demonstrating to the
7 commission that it can do so while continuing to meet the require-
8 ments of ORS 215.243 and 527.630 and the land use planning goals
9 adopted under ORS 197.230.

10 “(3) A county with a minimum lot or parcel size acknowledged
11 pursuant to periodic review requirements under ORS 197.628 to 197.636
12 that is smaller than those prescribed in subsection (1) of this section
13 need not comply with subsection (2) of this section.

14 “SECTION 8. ORS 215.010 is amended to read:

15 “215.010. (1) As used in ORS chapter 215, the terms defined in ORS 92.010
16 shall have the meanings given therein, except that ‘parcel’:

17 “[(1)] (a) Includes a unit of land created:

18 “[(a)] (A) By partitioning land as defined in ORS 92.010;

19 “[(b)] (B) In compliance with all applicable planning, zoning and parti-
20 tioning ordinances and regulations; or

21 “[(c)] (C) By deed or land sales contract, if there were no applicable
22 planning, zoning or partitioning ordinances or regulations.

23 “[(2)] (b) Does not include a unit of land created solely to establish a
24 separate tax account.

25 “(2) As used in ORS chapter 215, the terms defined in ORS chapter
26 197 shall have the meanings given therein.

27 “(3) As used in ORS chapter 215, ‘farm use’ has the meaning given
28 that term in ORS 215.203.

29 “(4) For purposes of this chapter, ‘the Willamette Valley’ is Benton,
30 Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill
31 Counties and the portion of Lane County lying east of the summit of

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4 197.625, 215.010, 215.130, 215.213, 215.236, 215.263, 215.283, 215.296, 215.317,
5 215.327, 308.372 and 451.555 and section 3, chapter _____, Oregon Laws 1993
6 (Enrolled Senate Bill 1057); and repealing ORS 197.247, 215.214, 215.288,
7 215.303, 215.337, 527.800, 527.805 and 527.810 and sections 1 and 2, chapter
8 _____, Oregon Laws 1993 (Enrolled Senate Bill 1057), section 42a, chapter
9 _____, Oregon Laws 1993 (Enrolled House Bill 2438), and sections 1 and 2,
10 chapter _____, Oregon Laws 1993 (Enrolled House Bill 2734)."

11 Delete lines 15 through 24 and delete pages 2 through 84 and insert:

12 "**SECTION 1.** Sections 2 to 7, 10 and 29 of this Act are added to and
13 made a part of ORS chapter 215.

14 "**SECTION 2. (1)** A governing body of a county or its designate may
15 allow the establishment of a single-family dwelling on a lot or parcel
16 located within a farm or forest zone as set forth in this section and
17 sections 3 and 4 of this 1993 Act after notifying the county assessor
18 that the governing body intends to allow the dwelling. A dwelling un-
19 der this section may be allowed if:

20 "(a) The lot or parcel on which the dwelling will be sited was law-
21 fully created and was acquired by the present owner:

22 "(A) Prior to January 1, 1985; or

23 "(B) By devise or by intestate succession from a person who ac-
24 quired the lot or parcel prior to January 1, 1985.

1 “(b) The tract on which the dwelling will be sited does not include
2 a dwelling.

3 “(c) The proposed dwelling is not prohibited by, and will comply
4 with, the requirements of the acknowledged comprehensive plan and
5 land use regulations and other provisions of law.

6 “(d) The lot or parcel on which the dwelling will be sited, if zoned
7 for farm use, is not on that high-value farmland described in section
8 3 of this 1993 Act except as provided in subsections (2) and (3) of this
9 section.

10 “(e) The lot or parcel on which the dwelling will be sited, if zoned
11 for forest use, is described in section 4 of this 1993 Act.

12 “(f) When the lot or parcel on which the dwelling will be sited lies
13 within an area designated in an acknowledged comprehensive plan as
14 habitat of big game, the siting of the dwelling is consistent with the
15 limitations on density upon which the acknowledged comprehensive
16 plan and land use regulations intended to protect the habitat are
17 based.

18 “(g) When the lot or parcel on which the dwelling will be sited is
19 part of a tract, the remaining portions of the tract are consolidated
20 into a single lot or parcel when the dwelling is allowed.

21 “(2) Notwithstanding the requirements of subsection (1)(d) of this
22 section, a single-family dwelling not in conjunction with farm use may
23 be sited on high-value farmland if:

24 “(a) It meets the other requirements of sections 2 to 5 of this 1993
25 Act;

26 “(b) The lot or parcel is protected as high-value farmland as de-
27 scribed under section 3 (1) of this 1993 Act; and

28 “(c) A hearings officer of the State Department of Agriculture, un-
29 der the provisions of ORS 183.413 to 183.497, determines that:

30 “(A) The lot or parcel cannot practicably be managed for farm use,
31 by itself or in conjunction with other land, due to extraordinary cir-

1 cumstances inherent in the land or its physical setting that do not
2 apply generally to other land in the vicinity.

3 "(B) The dwelling will comply with the provisions of ORS 215.296 (1).

4 "(C) The dwelling will not materially alter the stability of the
5 overall land use pattern in the area.

6 "(3) Notwithstanding the requirements of subsection (1)(d) of this
7 section, a single-family dwelling not in conjunction with farm use may
8 be sited on high-value farmland if:

9 "(a) It meets the other requirements of sections 2 to 5 of this 1993
10 Act.

11 "(b) The tract on which the dwelling will be sited is:

12 "(A) Identified in section 3 (3) or (4) of this 1993 Act;

13 "(B) Not protected under section 3 (1) of this 1993 Act; and

14 "(C) Twenty-one acres or less in size.

15 "(c)(A) The tract is bordered on at least 67 percent of its perimeter
16 by tracts that are smaller than 21 acres, and at least two such tracts
17 had dwellings on them on January 1, 1993; or

18 "(B) The tract is bordered on at least 25 percent of its perimeter by
19 tracts that are smaller than 21 acres, and at least four dwellings ex-
20 isted on January 1, 1993, within one-quarter mile of the center of the
21 subject tract. Up to two of the four dwellings may lie within the urban
22 growth boundary, but only if the subject tract abuts an urban growth
23 boundary.

24 "(4) If land is in a zone that allows both farm and forest uses and
25 is acknowledged to be in compliance with goals relating to both agri-
26 culture and forestry, the county may apply the standards for siting a
27 dwelling under either section 3 or 4 of this 1993 Act as appropriate for
28 the predominant use of the tract on January 1, 1993.

29 "(5) A county may, by application of criteria adopted by ordinance,
30 deny approval of a dwelling allowed under this section in any area
31 where the county determines that approval of the dwelling would:

1 “(a) Exceed the facilities and service capabilities of the area;

2 “(b) Materially alter the stability of the overall land use pattern in
3 the area; or

4 “(c) Create conditions or circumstances that the county determines
5 would be contrary to the purposes or intent of its acknowledged com-
6 prehensive plan or land use regulations.

7 “(6) For purposes of subsection (1)(a) of this section, ‘owner’ in-
8 cludes the wife, husband, son, daughter, mother, father, brother,
9 brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law,
10 mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent,
11 stepchild, grandparent or grandchild of the owner or a business entity
12 owned by any one or combination of these family members.

13 “SECTION 3. (1) For purposes of section 2 of this Act, high-value
14 farmland is land in a tract composed predominantly of soils that, at
15 the time the siting of a dwelling is approved for the tract, are:

16 “(a) Irrigated and classified prime, unique, Class I or Class II; or

17 “(b) Not irrigated and classified prime, unique, Class I or Class II.

18 “(2) In addition to that land described in subsection (1) of this sec-
19 tion, for purposes of section 2 of this 1993 Act, high-value farmland,
20 if outside the Willamette Valley, includes tracts growing specified
21 perennials as demonstrated by the most recent aerial photography of
22 the Agricultural Stabilization and Conservation Service of the United
23 States Department of Agriculture taken prior to the effective date of
24 this 1993 Act. For purposes of this subsection, ‘specified perennials’
25 means perennials grown for market or research purposes including,
26 but not limited to, nursery stock, berries, fruits, nuts, Christmas trees
27 or vineyards but not including seed crops, hay, pasture or alfalfa.

28 “(3) In addition to that land described in subsection (1) of this sec-
29 tion, for purposes of section 2 of this 1993 Act, high-value farmland,
30 if in the Willamette Valley, includes tracts composed predominantly
31 of the following soils in Class III or IV or composed predominantly of

1 a combination of soils described in subsection (1) of this section and
2 the following soils:

3 "(a) Subclassification IIIe, specifically, Bellpine, Bornstedt,
4 Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius,
5 Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hultt,
6 Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia,
7 Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton,
8 Veneta, Willakenzie, Woodburn and Yamhill;

9 "(b) Subclassification IIIw, specifically, Concord, Conser, Cornelius
10 Variant, Dayton (thick surface) and Sifton (occasionally flooded);

11 "(c) Subclassification IVe, specifically, Bellpine Silty Clay Loam,
12 Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell,
13 Quatama, Springwater, Willakenzie and Yamhill; and

14 "(d) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney,
15 Dayton, Natroy, Noti and Whiteson.

16 "(4) In addition to that land described in subsection (1) of this sec-
17 tion, for purposes of section 2 of this 1993 Act, high-value farmland,
18 if west of the summit of the Coast Range and used in conjunction with
19 a dairy operation on January 1, 1993, includes tracts composed pre-
20 dominantly of the following soils in Class III or IV or composed
21 predominately of a combination of soils described in subsection (1) of
22 this section and the following soils:

23 "(a) Subclassification IIIe, specifically, Astoria, Hembre, Knappa,
24 Meda, Quillayutte and Winema;

25 "(b) Subclassification IIIw, specifically, Brenner and Chitwood;

26 "(c) Subclassification IVe, specifically, Astoria, Hembre, Meda,
27 Nehalan, Neskowin and Winema; and

28 "(d) Subclassification IVw, specifically, Coquille.

29 "(5) The soil class, soil rating or other soil designation of a specific
30 lot or parcel may be changed if the property owner submits a state-
31 ment of agreement from the Soil Conservation Service of the United

1 States Department of Agriculture that the soil class, soil rating or
2 other soil designation should be adjusted based on new information.

3 "(6) Soil classes, soil ratings or other soil designations used in or
4 made pursuant to this section are those of the Soil Conservation Ser-
5 vice in its most recent publication for that class, rating or designation
6 before the effective date of this 1993 Act.

7 "SECTION 4. (1) A dwelling authorized under section 2 of this 1993
8 Act may be allowed on land zoned for forest use under a goal pro-
9 tecting forestland only if:

10 "(a) The tract on which the dwelling will be sited is in western
11 Oregon, as defined in ORS 321.257, and is composed of soils not capable
12 of producing 5,000 cubic feet per year of commercial tree species and
13 is located within 1,500 feet of a public road as defined under ORS
14 368.001. The road shall not be a United States Forest Service road or
15 Bureau of Land Management road and shall be maintained and either
16 paved or surfaced with rock.

17 "(b) The tract on which the dwelling will be sited is in eastern
18 Oregon, as defined in ORS 321.405, and is composed of soils not capable
19 of producing 4,000 cubic feet per year of commercial tree species and
20 is located within 1,500 feet of a public road as defined under ORS
21 368.001. The road shall not be a United States Forest Service road or
22 Bureau of Land Management road and shall be maintained and either
23 paved or surfaced with rock.

24 "(2) If a dwelling is not allowed under subsection (1) of this section,
25 a dwelling may be allowed on land zoned for forest use under a goal
26 protecting forestland if it complies with other provisions of law and
27 is sited on a tract:

28 "(a) In eastern Oregon of at least 240 contiguous acres except as
29 provided in subsection (5) of this section; or

30 "(b) In western Oregon of at least 160 contiguous acres except as
31 provided in subsection (5) of this section.

1 “(3) For purposes of subsection (2) of this section, a tract shall not
2 be considered to consist of less than 240 acres or 160 acres because it
3 is crossed by a public road or a waterway.

4 “(4) For purposes of this section, ‘commercial tree species’ means
5 trees recognized under rules adopted under ORS 527.715 for commercial
6 production.

7 “(5)(a) An owner of tracts that are not contiguous but are in the
8 same county or adjacent counties and zoned for forest use may add
9 together the acreage of two or more tracts to total 320 acres or more
10 in eastern Oregon or 200 acres or more in western Oregon to qualify
11 for a dwelling under subsection (2) of this section.

12 “(b) If an owner totals 320 or 200 acres, as appropriate, under par-
13 agraph (a) of this subsection, the owner shall submit proof of
14 nonrevocable deed restrictions recorded in the deed records for the
15 tracts in the 320 or 200 acres, as appropriate. The deed restrictions
16 shall preclude all future rights to construct a dwelling on the tracts
17 or to use the tracts to total acreage for future siting of dwellings for
18 present and any future owners unless the tract is no longer subject to
19 protection under goals for agricultural lands or forestlands.

20 “(c) The Land Conservation and Development Commission shall
21 adopt rules that prescribe the language of the deed restriction, the
22 procedures for recording, the procedures under which counties shall
23 keep records of lots or parcels used to create the total, the mech-
24 anisms for providing notice to subsequent purchasers of the limita-
25 tions under paragraph (b) of this subsection and other rules to
26 implement this section.

27 “(6)(a) In western Oregon, a governing body of a county or its des-
28 ignate may allow the establishment of a single-family dwelling on a lot
29 or parcel, that existed on January 1, 1993, located within a forest zone
30 if the tract is predominantly composed of soils that are:

31 “(A) Capable of producing 0 to 49 cubic feet per acre per year of

1 wood fiber if:

2 "(i) This tract and all or part of at least three other lots or parcels
3 exist within a 160-acre square centered on the center of the subject
4 tract; and

5 "(ii) At least three dwellings existed on January 1, 1993, on the
6 other lots or parcels;

7 "(B) Capable of producing 50 to 85 cubic feet per acre per year of
8 wood fiber if:

9 "(i) All or part of at least seven other lots or parcels exist within
10 a 160-acre square centered on the center of the subject tract; and

11 "(ii) At least three dwellings existed on January 1, 1993, on the
12 other lots or parcels; or

13 "(C) Capable of producing more than 85 cubic feet per acre per year
14 of wood fiber if:

15 "(i) All or part of at least 11 other lots or parcels exist within a
16 160-acre square centered on the center of the subject tract; and

17 "(ii) At least three dwellings existed on January 1, 1993, on the
18 other lots or parcels.

19 "(b) In eastern Oregon, a governing body of a county or its desig-
20 nate may allow the establishment of a single-family dwelling on a lot
21 or parcel located within a forest zone if the tract is predominantly
22 composed of soils that are:

23 "(A) Capable of producing 0 to 50 cubic feet per acre per year of
24 wood fiber if:

25 "(i) All or part of at least seven other lots or parcels exist within
26 a 160-acre square centered on the center of the subject tract; and

27 "(ii) At least three dwellings existed on January 1, 1993, on the
28 other lots or parcels; or

29 "(B) Capable of producing more than 50 cubic feet per acre per year
30 of wood fiber if:

31 "(i) All or part of at least 11 other lots or parcels exist within a

1 160-acre square centered on the center of the subject tract; and
2 “(ii) At least three dwellings existed on January 1, 1993, on the
3 other lots or parcels.
4 “(c) Lots or parcels within urban growth boundaries shall not be
5 used to satisfy the eligibility requirements under this subsection.
6 “(d) A proposed dwelling under this subsection is not allowed:
7 “(A) If it is prohibited by or will not comply with the requirements
8 of an acknowledged comprehensive plan or acknowledged land use
9 regulations or other provisions of law.
10 “(B) Unless it complies with the requirements of section 5 of this
11 1993 Act.
12 “(C) Unless no dwellings are allowed on other lots or parcels that
13 make up the tract and deed restrictions established under subsection
14 (5) of this section for the other lots or parcels that make up the tract
15 are met.
16 “(D) If the tract on which the dwelling will be sited includes a
17 dwelling.
18 “(7) Except as described in subsection (8) of this section, if the tract
19 under subsection (6) of this section abuts a road, the measurement
20 may be made by creating a 160-acre rectangle that is one mile long and
21 one-fourth mile wide centered on the center of the subject tract and
22 that is to the maximum extent possible, aligned with the road.
23 “(8)(a) If a tract 60 acres or larger described under subsection (6)
24 of this section abuts a road or perennial stream, the measurement
25 shall be made in accordance with subsection (7) of this section. How-
26 ever, one of the three required dwellings shall be on the same side of
27 the road or stream as the tract and:
28 “(A) Be located within a 160-acre rectangle that is one mile long and
29 one-fourth mile wide centered on the center of the subject tract and
30 that is, to the maximum extent possible, aligned with the road or
31 stream; or

1 “(B) Be within one-quarter mile from the edge of the subject tract
2 but not outside the length of the 160-acre rectangle, and on the same
3 side of the road or stream as the tract.

4 “(b) If a road crosses the tract on which the dwelling will be lo-
5 cated, at least one of the three required dwellings shall be on the same
6 side of the road or stream as the proposed dwelling.

7 “(9) No dwelling other than those described in this section may be
8 sited on land zoned for forest use under a land use planning goal pro-
9 tecting forestland.

10 “SECTION 5. (1) A local government shall require as a condition
11 of approval of a single-family dwelling allowed under section 2 of this
12 1993 Act on lands zoned forestland that:

13 “(a) The property owner submits a stocking survey report to the
14 assessor and the assessor verifies that the minimum stocking re-
15 quirements adopted under ORS 527.610 to 527.770 have been met.

16 “(b) The dwelling meets the following requirements:

17 “(A) The dwelling has a fire retardant roof.

18 “(B) The dwelling will not be sited on a slope of greater than 40
19 percent.

20 “(C) Evidence is provided that the domestic water supply is from a
21 source authorized by the Water Resources Department and not from
22 a Class II stream as designated by the State Board of Forestry.

23 “(D) The dwelling is located upon a parcel within a fire protection
24 district or is provided with residential fire protection by contract.

25 “(E) If the dwelling is not within a fire protection district, the ap-
26 plicant provides evidence that the applicant has asked to be included
27 in the nearest such district.

28 “(F) If the dwelling has a chimney or chimneys, each chimney has
29 a spark arrester.

30 “(G) The owner provides and maintains primary fuel-free break and
31 secondary break areas.

1 “(2)(a) If a governing body determines that meeting the require-
2 ment of subsection (1)(b)(D) of this section would be impracticable, the
3 governing body may provide an alternative means for protecting the
4 dwelling from fire hazards. The means selected may include a fire
5 sprinkling system, onsite equipment and water storage or other
6 methods that are reasonable, given the site conditions.

7 “(b) If a water supply is required under this subsection, it shall be
8 a swimming pool, pond, lake or similar body of water that at all times
9 contains at least 4,000 gallons or a stream that has a minimum flow
10 of at least one cubic foot per second. Road access shall be provided to
11 within 15 feet of the water's edge for fire-fighting pumping units, and
12 the road access shall accommodate a turnaround for fire-fighting
13 equipment.

14 “NOTE: Section 6 was deleted. Subsequent sections were not renumbered.

15 “SECTION 7. (1) Except as provided in subsection (2) of this section,
16 the following minimum lot or parcel sizes apply to all counties:

17 “(a) For land zoned for exclusive farm use and not designated
18 rangeland, at least 80 acres;

19 “(b) For land zoned for exclusive farm use and designated
20 rangeland, at least 160 acres; and

21 “(c) For land designated forestland, at least 80 acres.

22 “(2) A county may adopt a lower minimum lot or parcel size than
23 that described in subsection (1) of this section by demonstrating to the
24 commission that it can do so while continuing to meet the require-
25 ments of ORS 215.243 and 527.630 and the land use planning goals
26 adopted under ORS 197.230.

27 “(3) A county with a minimum lot or parcel size acknowledged by
28 the commission pursuant to ORS 197.251 after January 1, 1987, or ac-
29 knowledged pursuant to periodic review requirements under ORS
30 197.628 to 197.636 that is smaller than those prescribed in subsection
31 (1) of this section need not comply with subsection (2) of this section.

DAR

B-Engrossed House Bill 3661

Ordered by the Senate July 31
Including House Amendments dated June 3 and Senate Amendments
dated July 31

Introduced and printed pursuant to House Rule 13.01

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Establishes three-tier system for identifying large-scale primary, small-scale primary and secondary farm or forest lands. Establishes rural lands policy. Establishes procedures for county adoption, approval by Land Conservation and Development Commission and judicial appeal.]

[Precludes persons from making certain claims for relief against certain resource users. Makes related changes. Limits state agency appeals of land use decision. Establishes standard of review for Land Conservation and Development Commission and Land Use Board of Appeals.]

[In lieu of other provisions of bill, allows adoption of Land Conservation and Development system for identifying and using most rural land.]

[Declares emergency, effective on passage.]

Authorizes governing body of county to allow single-family dwelling on lot or parcel in farm or forest zone, under certain circumstances. Limits dwelling site on high-value farmland or certain forestland. Describes requirements for lots and minimum lot sizes; Defines terms. Allows restoration or replacement of certain existing dwelling on exclusive farm use land. Modifies provisions allowing establishment of dwelling on land unsuited for farm or forest use.

Prohibits Land Conservation and Development Commission from identifying or designating small scale farmland or secondary land. Circumscribes LCDC rulemaking authority. Allows county to continue to apply marginal lands provisions adopted before January 1, 1993, with certain exception. Modifies use of land allowed under marginal lands provisions.

Protects farming and forest practices from certain nuisance and trespassing actions. Defines terms. Makes related changes.

Directs Land Use Board of Appeals to affirm local government's interpretation of its comprehensive plan and land use regulations under certain circumstances.

Modifies other provisions of appeal. Provides for alternative dispute resolution for conflicts between state and local government interests.

Modifies duties and composition of LCDC.

A BILL FOR AN ACT

1
2 Relating to land use; creating new provisions; amending ORS 30.930, 30.985, 30.940, 92.044, 92.046,
3 93.040, 197.010, 197.090, 197.040, 197.045, 197.065, 197.175, 197.825, 215.010, 215.130, 215.213,
4 215.236, 215.263, 215.283, 215.296, 215.317, 215.327, 308.372 and 451.555 and section 3,
5 chapter _____, Oregon Laws 1993 (Enrolled Senate Bill 1057); and repealing ORS 197.247,
6 215.214, 215.288, 215.303, 215.337, 527.800, 527.805 and 527.810 and sections 1 and 2, chapter
7 _____, Oregon Laws 1993 (Enrolled Senate Bill 1057), section 42a, chapter _____, Oregon
8 Laws 1993 (Enrolled House Bill 2438), and sections 1 and 2, chapter _____, Oregon Laws 1993
9 (Enrolled House Bill 2734).

10 Be It Enacted by the People of the State of Oregon:

11 **SECTION 1.** Sections 2 to 7, 10 and 29 of this Act are added to and made a part of ORS
12 chapter 215.

13 **SECTION 2.** (1) A governing body of a county or its designate may allow the establish-
14 ment of a single-family dwelling on a lot or parcel located within a farm or forest zone as

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

1 set forth in this section and sections 3 and 4 of this 1993 Act after notifying the county
2 assessor that the governing body intends to allow the dwelling. A dwelling under this section 2
3 may be allowed if:

4 (a) The lot or parcel on which the dwelling will be sited was lawfully created and was
5 acquired by the present owner:

6 (A) Prior to January 1, 1985; or

7 (B) By devise or by intestate succession from a person who acquired the lot or parcel
8 prior to January 1, 1985.

9 (b) The tract on which the dwelling will be sited does not include a dwelling.

10 (c) The proposed dwelling is not prohibited by, and will comply with, the requirements
11 of the acknowledged comprehensive plan and land use regulations and other provisions of
12 law.

13 (d) The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on
14 that high-value farmland described in section 3 of this 1993 Act except as provided in sub-
15 sections (2) and (3) of this section.

16 (e) The lot or parcel on which the dwelling will be sited, if zoned for forest use, is de-
17 scribed in section 4 of this 1993 Act.

18 (f) When the lot or parcel on which the dwelling will be sited lies within an area desig-
19 nated in an acknowledged comprehensive plan as habitat of big game, the siting of the
20 dwelling is consistent with the limitations on density upon which the acknowledged compre-
21 hensive plan and land use regulations intended to protect the habitat are based.

22 (g) When the lot or parcel on which the dwelling will be sited is part of a tract, the re-
23 maining portions of the tract are consolidated into a single lot or parcel when the dwelling
24 is allowed.

25 (2) Notwithstanding the requirements of subsection (1)(d) of this section, a single-family
26 dwelling not in conjunction with farm use may be sited on high-value farmland if:

27 (a) It meets the other requirements of sections 2 to 5 of this 1993 Act;

28 (b) The lot or parcel is protected as high-value farmland as described under section 3 (1)
29 of this 1993 Act; and

30 (c) A hearings officer of the State Department of Agriculture, under the provisions of
31 ORS 183.413 to 183.497, determines that:

32 (A) The lot or parcel cannot practicably be managed for farm use, by itself or in con-
33 junction with other land, due to extraordinary circumstances inherent in the land or its
34 physical setting that do not apply generally to other land in the vicinity.

35 (B) The dwelling will comply with the provisions of ORS 215.296 (1).

36 (C) The dwelling will not materially alter the stability of the overall land use pattern in
37 the area.

38 (3) Notwithstanding the requirements of subsection (1)(d) of this section, a single-family
39 dwelling not in conjunction with farm use may be sited on high-value farmland if:

40 (a) It meets the other requirements of sections 2 to 5 of this 1993 Act.

41 (b) The tract on which the dwelling will be sited is:

42 (A) Identified in section 3 (3) or (4) of this 1993 Act;

43 (B) Not protected under section 3 (1) of this 1993 Act; and

44 (C) Twenty-one acres or less in size.

45 (c)(A) The tract is bordered on at least 87 percent of its perimeter by tracts that are

1 smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993;
2 or

3 (B) The tract is bordered on at least 25 percent of its perimeter by tracts that are
4 smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-
5 quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within
6 the urban growth boundary, but only if the subject tract abuts an urban growth boundary.

7 (4) If land is in a zone that allows both farm and forest uses and is acknowledged to be
8 in compliance with goals relating to both agriculture and forestry, the county may apply the
9 standards for siting a dwelling under either section 3 or 4 of this 1993 Act as appropriate for
10 the predominant use of the tract on January 1, 1993.

11 (5) A county may, by application of criteria adopted by ordinance, deny approval of a
12 dwelling allowed under this section in any area where the county determines that approval
13 of the dwelling would:

- 14 (a) Exceed the facilities and service capabilities of the area;
15 (b) Materially alter the stability of the overall land use pattern in the area; or
16 (c) Create conditions or circumstances that the county determines would be contrary to
17 the purposes or intent of its acknowledged comprehensive plan or land use regulations.

18 (6) For purposes of subsection (1)(a) of this section, "owner" includes the wife, husband,
19 son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law,
20 daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent,
21 stepchild, grandparent or grandchild of the owner or a business entity owned by any one or
22 combination of these family members.

23 SECTION 3. (1) For purposes of section 2 of this Act, high-value farmland is land in a
24 tract composed predominantly of soils that, at the time the siting of a dwelling is approved
25 for the tract, are:

- 26 (a) Irrigated and classified prime, unique, Class I or Class II; or
27 (b) Not irrigated and classified prime, unique, Class I or Class II.

28 (2) In addition to that land described in subsection (1) of this section, for purposes of
29 section 2 of this 1993 Act, high-value farmland, if outside the Willamette Valley, includes
30 tracts growing specified perennials as demonstrated by the most recent aerial photography
31 of the Agricultural Stabilization and Conservation Service of the United States Department
32 of Agriculture taken prior to the effective date of this 1993 Act. For purposes of this sub-
33 section, "specified perennials" means perennials grown for market or research purposes in-
34 cluding, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards
35 but not including seed crops, hay, pasture or alfalfa.

36 (3) In addition to that land described in subsection (1) of this section, for purposes of
37 section 2 of this 1993 Act, high-value farmland, if in the Willamette Valley, includes tracts
38 composed predominantly of the following soils in Class III or IV or composed predominantly
39 of a combination of soils described in subsection (1) of this section and the following soils:

40 (a) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton,
41 Cascade, Chehalem, Cornelius, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro,
42 Hullt, Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price,
43 Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and
44 Yamhill;

45 (b) Subclassification IIIw, specifically, Concord, Conser, Cornelius Variant, Dayton (thick

1 surface) and Sifton (occasionally flooded);

2 (c) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory,
3 Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and

4 (d) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti
5 and Whiteson.

6 (4) In addition to that land described in subsection (1) of this section, for purposes of
7 section 2 of this 1993 Act, high-value farmland, if west of the summit of the Coast Range and
8 used in conjunction with a dairy operation on January 1, 1993, includes tracts composed
9 predominantly of the following soils in Class III or IV or composed predominately of a com-
10 bination of soils described in subsection (1) of this section and the following soils:

11 (a) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and
12 Winema;

13 (b) Subclassification IIIw, specifically, Brenner and Chitwood;

14 (c) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalan, Neskowin and
15 Winema; and

16 (d) Subclassification IVw, specifically, Coquille.

17 (6) The soil class, soil rating or other soil designation of a specific lot or parcel may be
18 changed if the property owner submits a statement of agreement from the Soil Conservation
19 Service of the United States Department of Agriculture that the soil class, soil rating or
20 other soil designation should be adjusted based on new information.

21 (6) Soil classes, soil ratings or other soil designations used in or made pursuant to this
22 section are those of the Soil Conservation Service in its most recent publication for that
23 class, rating or designation before the effective date of this 1993 Act.

24 SECTION 4. (1) A dwelling authorized under section 2 of this 1993 Act may be allowed
25 on land zoned for forest use under a goal protecting forestland only if:

26 (a) The tract on which the dwelling will be sited is in western Oregon, as defined in ORS
27 321.257, and is composed of soils not capable of producing 5,000 cubic feet per year of com-
28 mercial tree species and is located within 1,500 feet of a public road as defined under ORS
29 368.001. The road shall not be a United States Forest Service road or Bureau of Land Man-
30 agement road and shall be maintained and either paved or surfaced with rock.

31 (b) The tract on which the dwelling will be sited is in eastern Oregon, as defined in ORS
32 321.405, and is composed of soils not capable of producing 4,000 cubic feet per year of com-
33 mercial tree species and is located within 1,500 feet of a public road as defined under ORS
34 368.001. The road shall not be a United States Forest Service road or Bureau of Land Man-
35 agement road and shall be maintained and either paved or surfaced with rock.

36 (2) If a dwelling is not allowed under subsection (1) of this section, a dwelling may be
37 allowed on land zoned for forest use under a goal protecting forestland if it complies with
38 other provisions of law and is sited on a tract:

39 (a) In eastern Oregon of at least 240 contiguous acres except as provided in subsection
40 (5) of this section; or

41 (b) In western Oregon of at least 160 contiguous acres except as provided in subsection
42 (5) of this section.

43 (8) For purposes of subsection (2) of this section, a tract shall not be considered to con-
44 sist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway.

45 (4) For purposes of this section, "commercial tree species" means trees recognized under

164 of record

160 new

1 rules adopted under ORS 527.715 for commercial production.

2 (5)(a) An owner of tracts that are not contiguous but are in the same county or adjacent
3 counties and zoned for forest use may add together the acreage of two or more tracts to
4 total 320 acres or more in eastern Oregon or 200 acres or more in western Oregon to qualify
5 for a dwelling under subsection (2) of this section.

6 (b) If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this sub-
7 section, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed
8 records for the tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall
9 preclude all future rights to construct a dwelling on the tracts or to use the tracts to total
10 acreage for future siting of dwellings for present and any future owners unless the tract is
11 no longer subject to protection under goals for agricultural lands or forestlands.

12 (c) The Land Conservation and Development Commission shall adopt rules that prescribe
13 the language of the deed restriction, the procedures for recording, the procedures under
14 which counties shall keep records of lots or parcels used to create the total, the mechanisms
15 for providing notice to subsequent purchasers of the limitations under paragraph (b) of this
16 subsection and other rules to implement this section.

17 (6)(a) In western Oregon, a governing body of a county or its designate may allow the
18 establishment of a single-family dwelling on a lot or parcel located within a forest zone if the
19 lot or parcel is predominantly composed of soils that are:

20 (A) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

21 (i) All or part of at least three other lots or parcels that existed on January 1, 1993, are
22 within a 160-acre square centered on the center of the subject tract; and

23 (ii) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

24 (B) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

25 (i) All or part of at least seven other lots or parcels that existed on January 1, 1993, are
26 within a 160-acre square centered on the center of the subject tract; and

27 (ii) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

28 (C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

29 (i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are
30 within a 160-acre square centered on the center of the subject tract; and

31 (ii) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

32 (b) In eastern Oregon, a governing body of a county or its designate may allow the es-
33 tablishment of a single-family dwelling on a lot or parcel located within a forest zone if the
34 lot or parcel is predominantly composed of soils that are:

35 (A) Capable of producing 0 to 20 cubic feet per acre per year of wood fiber if:

36 (i) All or part of at least three other lots or parcels that existed on January 1, 1993, are
37 within a 160-acre square centered on the center of the subject tract; and

38 (ii) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

39 (B) Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

40 (i) All or part of at least seven other lots or parcels that existed on January 1, 1993, are
41 within a 160-acre square centered on the center of the subject tract; and

42 (ii) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

43 (C) Capable of producing more than 50 cubic feet per acre per year of wood fiber if:

44 (i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are
45 within a 160-acre square centered on the center of the subject tract; and



Small Woodlot

- 1 (ii) At least three dwellings existed on January 1, 1993, on the other lots or parcels.
- 2 (c) Lots or parcels within urban growth boundaries shall not be used to satisfy the el-
- 3 igibility requirements under this subsection.
- 4 (d) A proposed dwelling under this subsection is not allowed:
- 5 (A) If it is prohibited by or will not comply with the requirements of an acknowledged
- 6 comprehensive plan or acknowledged land use regulations or other provisions of law.
- 7 (B) Unless it complies with the requirements of section 5 of this 1993 Act.
- 8 (C) Unless no dwellings are allowed on other lots or parcels that make up the tract and
- 9 deed restrictions established under subsection (5) of this section for the other lots or parcels
- 10 that make up the tract are met.

11 (D) If the tract on which the dwelling will be sited includes a dwelling.

12 (7) Except as described in subsection (8) of this section, if the tract under subsection (6)

13 of this section abuts a road that existed on January 1, 1993, the measurement may be made

14 by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on

15 the center of the subject tract and that is to the maximum extent possible, aligned with the

16 road.

17 (8)(a) If a tract 60 acres or larger described under subsection (6) of this section abuts a

18 road or perennial stream, the measurement shall be made in accordance with subsection (7)

19 of this section. However, one of the three required dwellings shall be on the same side of the

20 road or stream as the tract and:

21 (A) Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide

22 centered on the center of the subject tract and that is, to the maximum extent possible,

23 aligned with the road or stream; or

24 (B) Be within one-quarter mile from the edge of the subject tract but not outside the

25 length of the 160-acre rectangle, and on the same side of the road or stream as the tract.

26 (b) If a road crosses the tract on which the dwelling will be located, at least one of the

27 three required dwellings shall be on the same side of the road as the proposed dwelling.

28 (9) No dwelling other than those described in this section may be sited on land zoned for

29 forest use under a land use planning goal protecting forestland.

30 **SECTION 5.** (1) A local government shall require as a condition of approval of a single-

31 family dwelling allowed under section 2 of this 1993 Act on lands zoned forestland that:

32 (a) The property owner submits a stocking survey report to the assessor and the

33 assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to

34 527.770 have been met.

35 (b) The dwelling meets the following requirements:

36 (A) The dwelling has a fire retardant roof.

37 (B) The dwelling will not be sited on a slope of greater than 40 percent.

38 (C) Evidence is provided that the domestic water supply is from a source authorized by

39 the Water Resources Department and not from a Class II stream as designated by the State

40 Board of Forestry.

41 (D) The dwelling is located upon a parcel within a fire protection district or is provided

42 with residential fire protection by contract.

43 (E) If the dwelling is not within a fire protection district, the applicant provides evidence

44 that the applicant has asked to be included in the nearest such district.

45 (F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.



*Tract for 22 lots
near road (60 acres)
but some are
under highway.*

1 (G) The owner provides and maintains primary fuel-free break and secondary break
2 areas.

3 (2)(a) If a governing body determines that meeting the requirement of subsection
4 (1)(b)(D) of this section would be impracticable, the governing body may provide an alterna-
5 tive means for protecting the dwelling from fire hazards. The means selected may include a
6 fire sprinkling system, onsite equipment and water storage or other methods that are rea-
7 sonable, given the site conditions.

8 (b) If a water supply is required under this subsection, it shall be a swimming pool, pond, ★
9 lake or similar body of water that at all times contains at least 4,000 gallons or a stream that
10 has a minimum flow of at least one cubic foot per second. Road access shall be provided to
11 within 15 feet of the water's edge for fire-fighting pumping units, and the road access shall
12 accommodate a turnaround for fire-fighting equipment.

13 NOTE: Section 6 was deleted by amendment. Subsequent sections were not renumbered.

14 SECTION 7. (1) Except as provided in subsection (2) of this section, the following mini-
15 mum lot or parcel sizes apply to all counties:

16 (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;

17 (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres;
18 and

19 (c) For land designated forestland, at least 80 acres.

20 (2) A county may adopt a lower minimum lot or parcel size than that described in sub-
21 section (1) of this section by demonstrating to the commission that it can do so while con-
22 tinuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals
23 adopted under ORS 197.230.

24 (3) A county with a minimum lot or parcel size acknowledged by the commission pursu-
25 ant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review re-
26 quirements under ORS 197.628 to 197.636 that is smaller than those prescribed in subsection
27 (1) of this section need not comply with subsection (2) of this section.

28 SECTION 8. ORS 215.010 is amended to read:

29 215.010. As used in ORS chapter 215: []

30 (1) The terms defined in ORS 92.010 shall have the meanings given therein, except that
31 "parcel":

32 [(1)] (a) Includes a unit of land created:

33 [(a)] (A) By partitioning land as defined in ORS 92.010;

34 [(b)] (B) In compliance with all applicable planning, zoning and partitioning ordinances and
35 regulations; or

36 [(c)] (C) By deed or land sales contract, if there were no applicable planning, zoning or parti-
37 tioning ordinances or regulations.

38 [(2)] (b) Does not include a unit of land created solely to establish a separate tax account.

39 (2) "Tract" means one or more contiguous lots or parcels under the same ownership.

40 (3) The terms defined in ORS chapter 197 shall have the meanings given therein.

41 (4) "Farm use" has the meaning given that term in ORS 215.208.

42 (5) "The Willamette Valley" is Benton, Clackamas, Linn, Marion, Multnomah, Polk,
43 Washington and Yamhill Counties and the portion of Lane County lying east of the summit
44 of the Coast Range.

45 SECTION 9. ORS 197.065 is amended to read:

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 consensus¹ on the Goal One proposal as follows:

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

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 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 LCEUTF 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 ___th day of July, 2010, by:

Mia Nelson, Chair

Michael 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.

MEMORANDUM

To: Lane County Board of Commissioners
From: Mia Nelson, Chair of the Lane County Land Use Task Force
Date: July 20, 2010
Subject: Study opportunities related to rural development

Over the last few months, the Lane County Land Use Task Force (LCLUTF) spent a great deal of time discussing wide-ranging concerns related to the development of rural lands. This memo contains some of my thoughts and observations on these concerns. This is my opinion only; this is not a report of the LCLUTF as a whole.

We disagreed about many things, and in most cases we never came to anything resembling consensus. We disagreed about the balance point between the rights of the individual and the needs of the public. We disagreed about what are our most important public needs. We disagreed about how much development should be allowed on all types of rural land - not just resource lands (farm and forest) but on other types of rural lands as well. We disagreed about which kinds of development create more driving. We disagreed about what constitutes stewardship and appropriate use of rural land. These divisions seem to me reflective of unresolved disagreements within our broader community.

We had long debates regarding the overall desirability of rural development. Some members believe additional residential building should be allowed, and question whether it is in society's best interests to reduce rural development. They think that land use policies that discourage rural housing are at least partly responsible for the decline in the rural population of children, and subsequent decline in school enrollment. They place value on maintaining vibrant rural communities and believe additional rural homes would increase economic activity. They think that citizens should be able to live in the country if they wish.

Others believe the existing rules already allow too much rural development. These members think rural development has adverse energy and emissions consequences, and they also see a cumulative negative impact on habitat, farm and forest lands. They question what they see as tacit assumptions that all growth is good, that land is there to be exploited for financial gain, and urge a new model of stewardship that recognizes the interconnected nature of land, people and the inherent values in land that go beyond immediate financial reward. They said that in the past, the long-term ramifications of rural development have not been well considered. Their concern is that the landscape is suffering a "death by a thousand cuts," and that so much ill-considered rural development has already occurred that no more should be allowed.

We also disagreed about how productive land should be, in order to justify farm or forest (resource) designations. Some members said that lands that might be economically unproductive should nevertheless be retained in resource land designations due to the protections against development those designations provide. They think that all land has value, even if not for farming or forestry, and so should be preserved for wildlife habitat or open space.

Others think that residential development should be allowed on economically unproductive land since there is no other profitable use for it. They believe it is unfair to expect owners of unproductive rural lands to bear what they see as a disproportionately large burden in any plan to reduce rural development.

Reaching agreement on these issues is beyond the scope of the LCLUTF's duties or ability. However, I have provided further discussion on four subtopics, together with my suggestions for avenues of inquiry, in event any of these seem worthy of further investigation. It should be understood that the cost of some of these might be considerable, and could be prohibitive given the budget situation.

CUMULATIVE EFFECTS ON RESOURCE LAND. Economically unproductive land is not supposed to be rezoned if the land must remain in resource land designation to protect the productivity of surrounding resource lands. However, some LCLUTF members claim that in actual practice, rezonings are rarely stopped for this reason, and they would like this to be different in the future. They also think that the number of new forest template dwellings should be reduced. They believe the impact of rural housing over time is cumulative on farm and forest land and that current policies do not take this into account. **The Board could consider performing an evaluation of the cumulative effect of rural housing on the viability of farm and forest operations and then consider policy changes if deemed necessary.**

HABITAT & OPEN SPACE NEEDS. As noted above, some members think that all rural land has value as open space and should be preserved. Others believe that the county's large supply of undevelopable F-1 land fully meets the need for open space, obviating the need to ask owners of economically unproductive land to also contribute to this resource. Regarding habitat, there appeared to be general agreement that unless a site has been inventoried as a Goal 5 resource, a rezoning from a resource land designation was unlikely to be halted based on a need to protect habitat. **The Board could consider performing a Goal 5 inventory of habitat and open space resources.**

SCHOOLS. As noted above, some believe that land use policies that discourage rural housing are responsible for the decline in rural population of children and subsequent decline in school enrollment. One member provided evidence that in the Pleasant Hill school district there has been a decline in the proportion children bear to the total population, as compared to Oregon as a whole. They believe that "gentrification" of rural areas is occurring, and that if more rural development is allowed, prices will come down and young families with children will return to rural areas. Other members, who do not believe there is necessarily any correlation between Oregon's land use system and the decrease in rural children, disputed this contention. They point out that this demographic shift might be occurring in other states that do not have the same restrictions on rural growth. Rural homes and acreage are more expensive to purchase, maintain and commute from than urban homes, and this could be a driving force in the demographic shift. They also question whether it is in the best interests of children to attend small rural schools, and cited local examples of poor rural school performance and the subsequent choice of parents to move their children to an urban school district. **The Board could try to determine the root causes of demographic shifts in rural**

populations of children, the effect of those shifts on rural schools, the desirability of maintaining rural schools in the future, and then pursue policy changes aimed at altering the demographic shifts if deemed necessary and possible to achieve.

ENERGY & GHG EMISSIONS: Proponents of limiting rural development believe it is self-evident that rural development causes more energy use and greenhouse gas (GHG) emissions than urban development, and cited rush hour traffic on rural roads such as Highway 58. One member submitted a study that showed that on average, urban Americans produce 14% less carbon than do rural Americans. He also urged the LCLUTF to consider how our rural communities will function if oil supplies were to fall, for example, to 60% of today's levels. Several members expressed concern that we need to act now to change the way the rural areas are developed if we are to have any hope of meeting the state's ambitious targets for GHG reductions and avoid setting future rural residents up for financial trouble due to unmanageable transportation costs as gas prices rise. Other members said that while they agreed that controlling GHG and saving energy were worthy goals, they were not willing to accept as self-evident that rural development increases GHG and energy consumption. They pointed out that we don't really understand the driving habits of people - are commuters coming from other towns such as Veneta, or from rural homes? Examples exist of people driving less after moving to the country. Despite these objections, it appeared that most, perhaps all, LCLUTF members agree that energy and GHG emissions do need to be addressed. However, the majority would like to study the problem more, before taking action. These members said that the DLCDD and the MPOs are just starting a process of identifying an effective means of doing scenario planning and addressing global climate change through the land use and transportation system. As a result, they see the Goal One proposals that lay out specific fixes as premature; they "jump the gun." These members believe that there could be other solutions, such as increasing transit to rural areas. Some suggest filling up the existing exception lands we have via "rural infill," and think that this could result in less driving as local economic activity might increase and people would then work from their home area. However, this premise was hotly contested by others, who point to bedroom communities such as Veneta as proof that most outlying residents will continue to drive to Eugene and Springfield for work. **The Board could choose to develop standards for identifying and minimizing future GHG emissions and energy consumption in conjunction with the ongoing DLCDD and MPO scenario planning. The Board could then pursue policy changes to implement the strategies that come out of those planning efforts.**