

## LANE COUNTY LAND USE TASK FORCE REPORT

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

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

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

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

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

Consensus Alternate Proposal: None

Potential Measure 49 claims? Yet to be determined

Measure 56 notice required? Yet to be determined

Discussion:

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

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

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

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

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

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

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

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

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

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

- Goal 2, Policies 9 and 11: Change the date from January 1, 2010 to the date of adoption.
- Goal 2, Policy 12: Leave the existing language in place because eliminating this provision would create a hole in the plan regarding how changes in designation for existing D & C lands should be made.
- Goal 3, Policy 7: Leave the existing language in place because it simply explains why certain lands have been designated D & C in the past.
- LC 16.400(8)(a)(i): The proposed change is not recommended because it would change the definition of a minor plan amendment, making more applications be minor as opposed to major amendments, resulting in a decrease in fee revenues.

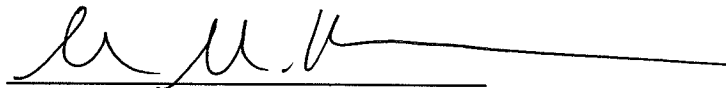
The LCLUTF also did not discuss the issue of whether Measure 49 would be implicated. Likewise, the LCLUTF also did not discuss the issue of whether Measure 56 notice would be required if the proposal was eventually adopted. The LCLUTF anticipates discussing these two issues as they relate to all of the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

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

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



Mia Nelson, Chair



Micheal M. Reeder, Vice Chair

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

## James A. Mann LLC

*Land Use Planning & Development Permit Services*

P.O. Box 51081

Eugene, Oregon 97405-0902

Telephone: (541) 514-3051

Email: [jamannllc@comcast.net](mailto:jamannllc@comcast.net)

April 8, 2010

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

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

Dear Kent,

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

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

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

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

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

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

I hope that this information will be helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim".

James A. Mann LLC

Attachment

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

#	Ordinance No.	Date Enacted	D&C Goal Exception	From Designat.	From Zoning	To Designat.	To Zoning	Acres	
1	908	2/12/1986	Goal 4	Forest	F-2	Public Facility	PF	5	
2	900A	5/11/1988	Goal 4	Forest	F-2	Rural Residential	RR10	10.75	
3	956	9/28/1988	Goal 3	Agriculture	E-40	Industrial	M-2	8.08	
4	968	6/21/1989	Goals 3&4	Forest	F-2	Rural Residential	RR-5	5.15	
5	1025	10/28/1992	Goal 4	Forest	F-1	Rural Commercial	C-R	1.14	
6	1036	5/19/1993	Goal 4	Forest	F-2	Rural Residential	RR-5	2	
7	1040	6/30/1993	Goal 3	Agriculture	E-30	Rural Residential	RR-5	9	
8	1060	8/10/1994	Goal 3	Agriculture	E-40	Rural Residential	RR-5	4.77	
9	1063	10/12/1994	Goal 3	Agriculture	E-40	Rural Residential	RR-5	3 lots 19.08	
10	1076	8/23/1995	Goal 4	Forest	F-2	Rural Residential	RR10	9.99	
11	1072	9/20/1995	Goals 3&4	Agriculture	E-30	Rural Residential	RR-5	17.34	
12	1094	1/29/1997	Goals 3&4	Forest	F-2	Rural Industrial	M-2/SR	11.11	
13	1095	2/5/1997	Goal 4	Forest	F-1	Rural Residential	RR2	0.2	
14	1096	3/19/1997	Goals 3&4	Agriculture	E-40	Rural Residential	RR-5	13.13	
15	1102	4/22/1998	Goals 3&4	Agriculture	E-40	Rural Residential	RR-5	21.92	
16	1112	5/13/1998	Goals 3&4	Agriculture	E-40	Rural Residential	RR-5	5.01	
17	1105	6/2/1998	Goals 3&4	Agriculture	E-40	Rural Residential	RR2	5 ?	
18	1111	8/5/1998	Goals 3&4	Forest	F-2	Rural Residential	RR5/SR	0.25	
19	1127	12/9/1998	Goals 3&4	Forest	F-2	Rural Residential	RR-2/SR	12.5	
20	1141	8/4/2000	Goals 3&4	Agriculture	E-40	Rural Residential	RR-5	32.54	
21	1148	3/14/2001	Goals 3&4	Agriculture	E-25	Rural Residential	RR2	13.39	
22	1166	2/6/2002	Goals 3&4	Forest	F-2	Rural Residential	RR-5	20	
<b>SUMMARY</b>									
TOTAL D&C ACRES FROM AGRICULTURE:				149.26	ACRES REZONED TO RR:				202.02
TOTAL D&C ACRES FROM FOREST:				78.09	ACRES REZONED TO M-2:				19.19
TOTAL D&C ACRES:				227.35	ACRES REZONED TO C-R:				1.14
AVERAGE D&C PROPERTY SIZE:				10.33	ACRES REZONED TO PF:				5