REQUEST: Amendments to the Coos County Zoning and Land Development Ordinance

STAFF CONTACT: Jill Rolfe, Planning Director

REVIEWING BODY: Coos County Board of Commissioners

APPLICABLE CRITERIA
Coos County Zoning and Land Development Ordinance (LDO), Coos County Comprehensive Plan (CCCP), Oregon Administrative Rule (OAR)

<table>
<thead>
<tr>
<th>LDO</th>
<th>Article 1.2</th>
<th>Legislative Amendments</th>
</tr>
</thead>
</table>

SECTION 1.2.100. Amendment of Text Only. An amendment to the text of this ordinance or the comprehensive plan is a legislative act within the authority of the Board of Commissioners. [OR 04 12 013PL 2/09/05]

SECTION 1.2.200 Who May Seek Change.
A text amendment may be initiated by the Board of Commissioners, Planning Commission or by application of a property owner or their authorized agent. An application by a property owner shall be accompanied by the required fee. [OR 04 12 013PL 2/09/05] Text amendments initiated by the Board of Commissioners shall comply with ORS 215.110(2). This requires the Planning Commission to make a recommendation to the Board of Commissioners.

SECTION 1.2.300 Alteration of a Recommended Amendment by the Planning Director. The Planning Director may recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria. The Planning Director shall submit such recommendations for an alteration to the Hearings Body prior to the scheduled public hearing for a determination whether the proposed amendment should be so altered.

SECTION 1.2.650 Status of Hearings Body Recommendations to the Board of Commissioners. A Hearings Body recommendation for approval or approval with conditions shall not in itself amend this Ordinance or constitute a final decision.

I. BACKGROUND

These changes are part of a work program that was put together by Staff and initiated by the Board of Commissioners. Staff has been working on needed changes to the ordinances since July of 2013. The first sets of changes were adopted on May 3, 2014. This is the second set of changes in the work program. Grant money was obtained through DLCD to make some of the changes. The changes have been requested from decision makers, public and Staff who are responsible for implementing the ordinances. The goal is to streamline the process (when possible), address readability, include uses that have not been listed, and update outdated language.

The draft language was completed and reviewed through work sessions with the Citizen Advisory Committee, the Planning Commission and the Board of Commissioners, Staff provided a 35-day post acknowledgment plan.
amendment (PAPA) notice to Department of Land Conservation and Development (DLCD). This notice is required 35 days prior to the first evidentiary hearing.

Staff was required to provide notice to all property owners that may be affected by the change, and this notice is referred to as a Measure 56 notice. In 1998, Oregon voters passed a law known as Ballot Measure 56. It requires that notices be mailed to landowners when a change in land-use laws might limit uses of their property. The law requires certain language to be used in the notices but that wording does not describe the likely effects from the change in land-use laws. Receiving this notice does not mean the changes affect anyone’s property or property value. The changes proposed are not authorizing any type of development or use of anyone’s property. This notice was mailed as required by CCZLDO § 5.0.900. Notice was also published in the World Newspaper. However, the notice did list the wrong publishing date. The notice was published on September 22, 2014 and again on October 6, 2014 (10 days prior to each hearing) in the World Newspaper.

II. PROPOSAL

This amendment covers many different sections as listed below is a general overview of the changes:

- **Chapter I General**
  - § 1.1.500 was moved from § 3.1.150 with no changes to the language.
  - § 1.1.900 Statement about required Downzoning has been removed. This statement no longer applies to current planning.
  - § 1.1.975 Vested Rights has been moved to Chapter 5.
  - Article 1.2 Legislative Amendment was moved to Article 5.1 and replaced with language under the next bullet point.
  - Article 1.2 Planning Commission has been added to the ordinance. This language covers the purpose of the planning commission, term of appointments, removal and quorums (moved from § 1.3.985).
  - Article 1.3 Enforcement contains a new violation procedure found in § 1.3.225.
  - § 1.3.800 updates the fine amount to be consistent with state law.
  - § 1.3.900 updates the language regarding fees.
  - § 1.3.950 has been moved from § 3.2.600 with no language change.
  - § 1.3.985 Planning Commission Quorum has moved to Article 1.2.
  - Article 1.4 Citizen Involvement Program (Citizen Advisory Committee) has been revised to modify secretarial duties, posting and publishing requirements and disagreements.

- **Chapter II, § 2.1.200 Definitions** – Definitions are proposed for clarification.
  - Agricultural Building definitions are from ORS.
  - Commercial Power Generating Facility is from ORS.
  - Dwelling definitions for clarification.
  - Grade is needed for Floodplain and Solar regulations.
  - Floating Home was added to uses and required a definition.
  - Height of Wind Energy System, Wind Energy System and Wind Tower are definitions needed in preparation for adoption of wind energy systems.
  - Kitchen definition was required.
  - Meteorological Towers added for clarification.
  - Photovoltaic System was added for solar power generation.
  - Setback has a clarification for measurements.
  - Temporary Residence was moved from chapter 3.
  - Temporary Use was moved from chapter 3.
  - Yurt definition has been added for clarification, as it only was defined for the forest zone.

- **Chapter III** has been revised to include the two major estuaries and all of their requirements.
  - Article 3.1 General Information – provides for general information pertaining to zoning districts maps, amendments of maps, interpretation of zoning boundaries, coastal shoreland boundaries, errors in the zoning, prohibited uses and supplemental provisions. The language changes are found in § 3.1.100 to include digitized maps and § 3.1.250 defines coastal shoreland boundary.
  - Article 3.2 is the new place for the Coos Bay Estuary Management Plan (CBEMP) zoning, activities/uses and development standards. This was moved from Article 4.5 and besides the move the
only changes to this article are the addition of road standards and moving the policies from Appendix 3 to follow the CBEMP zoning allowing for the reader to find the applicable policies.

- Article 3.3 is the Coquille River Estuary Management Plan (CREMP) zoning, activities/uses and development standards. These provisions were split between Article 4.1, 4.2, 4.4, 4.8 and 4.9 and have been consolidated into one area for easy use. The policies were moved from Appendix 2 to follow the CREMP zoning allowing the reader to find the applicable policies. The only other change was to correct structural shoreland stabilization as it made an incorrect reference, added in provisions for the waiver of minimum road frontage/lot width and clarification on how to measure the riparian setback.

- Chapter IV Balance of County Zones, Overlays & Special Consideration. This chapter has been reformatted to remove the tables and consolidate Article 4.1, 4.2, 4.4, 4.8 and 4.9 and portions of supplemental provisions that were found in Chapter III. This allows for all provisions that apply to a zone to be found in one area.
  - A table has been created at the beginning of the chapter listing all the Zoning, Special Development Considerations, and Overlay Zones. Once adopted this table will serve as a table of contents for the Chapter and will have hyperlinks to the page for easy access.
  - § 4.1.100 has been modified to adopt the digitized maps but keeps the Mylar maps as the official historical documents.
  - § 4.1.110 and § 4.1.120 have been modified to include the digital maps and account for interpretations using the original Mylar maps.
  - § 4.1.130 Interpretation of Coastal Shoreland Boundary has an added reference to Goal 17 and defines the decision process used.
  - § 4.1.140 has some updates to the section references.
  - § 4.1.150 has been removed due to the digitizing of the maps and updated mapping procedures.
  - § 4.1.160 Special Development Consideration and Overlays language has been updated to include the new Article 4.11 Special Development Considerations and remove the reference to the estuary plans which have been incorporated into Chapter III.
  - § 4.1.170 removes the reference to § 3.3.100.
  - Articles 4.2 through 4.8 have been reformatted to remove the tables. The other changes are as follows:
    - Updated language for hardship dwellings;
    - Allowances for guest house in certain zones;
    - Updates to Mobile Home Parks, RV Parks and Campgrounds;
    - Allowances for vacation rentals in certain zones;
    - Update to the riparian exception to include who can certify a hazard tree;
    - Allowance for floating homes in Rural Residential properties that abut a lake;
    - Addition of regulations for circus/carnivals;
    - Moving recreational vehicle language from Chapter III to be placed in the applicable zoning districts;
    - Adding language for shoreland structural stabilization requirements bring policy 5.11 from Appendix I into the language;
    - Updates to language for high intensity use in a industrial zone;
    - Allowance for RV Pads in the recreational zone;
    - Removal of Dog Kennels in the recreational zone;
    - Definition of Mixed Use added to forest zone;
    - Allowance for solar energy systems in all zones;
    - Corrections to statutory references;
    - Addition of definition of a road for clarification under template dwelling criteria;
    - Addition of clarification language for farm stands in the Exclusive Farm Use;
    - Removal of references to the Coquille River Estuary Management Plan which are now located in Chapter III;
    - Provisions for creating wetlands in the Exclusive Farm Use zone; and
    - Updates to land divisions in the Exclusive Farm Use zone.
    - Updates to riparian development standards to include measurement calculations.
    - Updates to provide an exception for pre-existing lots and parcels.
    - Updates to farm and forest to include fire stations as a permitted use.
  - Article 4.11 Covers the Special Development Considerations and Overlays
The references to the Estuary Plans have been incorporated in the estuary sections and this was redundant language that was removed.

The reference to special considerations maps has been removed because they no longer exist. Staff uses the detailed plan maps.

The table format has been removed and policies that pertain to the special considerations have been taken from Appendix I to make it easier for the reader to find the information. The format lists out the special development consideration, the inventory map, the legend from the map and then the text from the Appendix that applies to that special consideration.

The floodplain, Bandon Airport, Lakeside Airport and Powers Airport have no text changes but have been reformatte.

§ 4.11.400 through §4.11.460 is the new to address the Southwest Oregon Regional Airport (AKA: North Bend Municipal Airport). This airport language was omitted from the ordinance and plan in the past. Staff used Southwest Oregon Regional Airport Plan, North Bend Municipal Code and the Airport Land Use Compatibility Guidebook provided by Oregon Department of Aviation which includes the Airport Planning Rule of OAR 660-013-0010.

- Chapter VI – Updates to property line adjustments. The language was updated to include notifications to lien holders of record and procedures on how to record a deed.
- Chapter VII – Updates to remove reference to review standard 15 and replace it with the language that was in review standard 15. Minor changes to the table 7.2b regarding spacing and the Roadmaster’s discretion regarding minimum road standards. This will now be a noticeable decision. There was a clarification added to forestry roads (new and reopened) and clarification added to bonding including bonding for parking.

III. COMMENTS

There has been one comment received in opposition to all changes but the opponent failed to raise any objection specifically to the language changes.

The letter received is from Jody McCaffree and the first issue raised was a request for a 120 day review and comment period concerning proposed Coos County Zoning and Land Development Ordinance Changes.

**Staff Response:** The notice provided changes and the reason was given that these changes are part of a work program that was put together by Staff and initiated by the Board of Commissioners. Staff has been working on needed changes to the ordinances since July of 2013. The first sets of changes were adopted on May 3, 2014. This is the second set of changes in the work program. Grant money was obtained through DLCD to make some of the changes. The changes have been requested from decision makers, public and Staff who are responsible for implementing the ordinances. The goal is to streamline the process (when possible), address readability, include uses that have not been listed, and update outdated language.

Staff is perplexed by Ms. McCaffree’s statements as some of these changes are a direct result of her objections, such as, the addition of the airport standards. All groups with which we have an agreement to provide notices were provided notices. I have only one citizen request on file for Planning Commission meeting notifications and he was notified. As explained in the last legislative meeting if notice is requested in writing then notice will be provided. Ms. McCaffree was receiving updates and ordinances drafts up until July 18, 2014 because she was part of the Citizen Advisory Committee. She did not send notification on May 13, 2014 that she agreed that the ordinance was in need of updates but at that point was finding it harder and harder to stay on top of the changes. She expressed her need to step down from the committee. She also expressed that citizens should be heavily involved in this process even beyond the Citizens Committee. I agree but unfortunately citizen participation is hard to achieve. The fact is that we have been working on these changes for about a year and all the meetings have been open to the public (Citizen Advisory, Planning Commission and Board of Commission). Measure 56 notice was provided to all property owners within the county using the current assessment records twenty days prior
to the hearing. The meetings have been published in the newspaper and all drafts have been available on-line. We have had several people call or come by to review the changes. The notice provided sets out the changes.

The grant money obtained for the proposal has a deadline of October 30 and the Planning Commission is under no obligation to provide additional time, especially 120 days, for additional review time. She may request an extension from the Board of Commissioners but again there is no obligation to grant it.

The next issues raised by Ms. McCaffree was her request for state wide planning goals, OAR’s and ORS’s supporting and/or driving ordinance changes.

**Staff Response**: The changes to the ordinance are a combination of requirements from the statewide planning goals, OAR’s and ORS’s as well as simplifying process and addressing readability issues. Most of the changes cite an OAR, ORS or Goal. However, the majority of changes are moving provisions and making them clear which is not driven by any law other than the public’s and the decision makes need to understand how to apply the applicable law. Staff has worked with legal counsel to ensure that the provisions are consistent. Ms. McCaffree is welcome to provide examples of which provisions are not consistent and she has been asked to do that throughout the process. She has failed to do so and staff cannot provide answers to her questions when they are not specific enough to address. Making blanket statements is not helpful to the process. She makes allegations that prior changes were not in alignment with State or Federal law but again fails to show what was not in line with state law. She may disagree with changes but that is not a basis for not continuing to update an ordinance that has not gone through a major update since about 1999. Ms. McCaffree should also be aware that failure to provide statements or evidence sufficient to afford the decision makers an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

The last issues raised were requesting access to the entire comprehensive plan before the 120 day review period.

**Staff Response**: All planning documents are available to citizens at the Coos County Planning Department copies can be obtained for a fee of $0.50 per page. Anyone can view the documents or purchase copies. Copies of any portions of the plan that were involved in the changes were provided to citizen advisory. Staff is not proposing many changes to language at this point most of this is a reconfiguration. The major change is the airport which is consistent with state law and the intent of the ordinance. If Ms. McCaffree or these “other” citizens would like to view the ordinance then but public records law they may come in and view it. There is nothing that substantiates the allegation that she or anyone else has been denied access.

As a side note, Ms. McCaffree may submit her own application to make changes she feels are necessary to the plan and/or ordinance. It requires an application and a fee.

Ms. McCaffree cites ordinance provisions as a basis for her argument but fails again to explain the relevance to any of the proposed changes.

The relationship between the plan and the ordinance is sometimes misunderstood:

- "Zoning" carries out, or "implements" the "plan"
- “The Plan” is the legal basis for “zoning” but does not include specific regulations to implement the plan. The plan sets out goals and plans for the future land use needs for the county.

Therefore, specific “zoning” measures must, by law, conform to the general “plan” provisions. Again most of the proposed changes are a reformat of the ordinance and in no way changes the implementation of the plan. The other changes are to reflect areas of the implementing language that was out of compliance with state law such as references that were that were incorrectly cited to state law, addressing changes to state law or uses that had not been added to the zoning districts that are allowed by state law. The new uses are consistent with the zoning.
The plan is in need of updates and funding has always been an issue. Staff has to apply for grants or alternative funding in order to make necessary updates. Ms. McCaffree sometimes disagrees with the type of updates or questions why one provision is updated and another is not, but most of that is driven by staffing and funding reasons. Again, she is more than welcome to provide an application or provide help in the form of citing specific law but blanket statements and allegations are not productive.

The proposed changes are shown with strike out for removal of language and bold for new language.

COOS COUNTY PLANNING DEPARTMENT

Jill Rolfe, Planning Director

Attachments: “A” Proposed Changes
            “B” Comment received

EC: County Counsel
    Dave Perry, DLCD