



STAFF REPORT

JOSEPHINE COUNTY, OREGON, COMMUNITY DEVELOPMENT DEPARTMENT

RURAL LAND DEVELOPMENT CODE (RLDC) PROPOSED TEXT AMENDMENTS

**RLDC §11.030, 13.050, 13.060, 61.020, 61.050, 61.060, 69.440, 76.010, 76.020.E,
81.020, 84.020**

Date: August 28, 2017

To: Josephine County Rural Planning Commission

Staff: Julie A. Schmelzer, Community Development Director

Proposal: A series of proposed text amendments to address OLCC regulated marijuana production in the Rural Residential zones, and, other amendments deemed necessary for neighborhood compatibility, environmental protection, and to meet county goals, as allowed by state law.

Planning Commission Review: Section §24.010 of the RLDC states the purpose of Article 24, Planning Commission Review Procedures, “is to provide for the conduct of an impartial public hearing by the Rural Planning Commission for applications which involve significant policy issues having county-wide impact, or which will call for review and recommendation to the Board of Commissioners”. The specific procedures are listed in Article 24.

Section §46.020.B.1.d. explains the Planning Commission shall make final decisions to amend a comprehensive plan element unless the amendment involves an exception to statewide planning goals or involves farm or forest land. The proposed amendments *do* involve farm or forest lands; therefore, the Planning Commission's decision shall be a recommendation to the Board of Commissioners in the form of a recommended ordinance. Section §46.030 outlines the requirements to amend the text of the comprehensive plan (the Rural Land Development Code).

Board Review Authority:

§46.020.B.2.a of the RLDC states the Board of Commissioners must implement amendments of the County Comprehensive Plan by ordinance. A separate hearing will be held by the Board at a later date (to be determined).

Review Criteria:

§46.040 establishes review criteria which must be considered in reviewing the application. Details are as follows. In addition, compliance with planning goals is also reviewed and follow the RLDC review.

RLDC §46.040 – Plan Amendment Review Criteria

All plan amendments must comply with the requirements of RLDC §46.040. Here staff presents an abbreviated version of that section with a short comment on each subsection.

A. Compliance with all applicable statewide and county goals and policies.

Finding: Applicable statewide and county goals and policies have been satisfied (see the following sections for details).

B. Changes from a resource designation to a non-resource designation.

Finding: This requirement is not applicable.

C. Adequate carrying capacity to support densities and types of uses proposed.

Finding: Rural Residential zones were intended (see ‘Purpose’ section of the RLDC) for residential development. They typically are located in areas where services can more easily/efficiently be provided. Establishing management regulations help uphold the intended uses and crop densities for said districts. For example, Exclusive Farm Use zones are intended for more intensive agriculture than a Rural Residential zone.

D. Density and types of uses are appropriate based on consistency with the character of the area, or, if inconsistent how such use can be justified.

Finding: Agriculture/Farm Use is an allowed use in most zones, and, the state has determined marijuana an agricultural crop. The state has allowed counties the right to place time, place and manner restrictions on marijuana. The subject management regulations will help minimize land use conflicts and help uphold the character of the area. For example, less restrictive regulations in the farm zones allows more intensive agriculture/more plants/farm noise and is characteristic of a farm zone. Limiting crops in a zone intended for residential development, and requiring a home to be on a lot prior to a crop, supports the purpose of that zone and character of a residential area.

E. Change within an exception area must comply with OAR 660-004-0018.

Finding: This requirement is not applicable.

Statewide Planning Goals

Goal 1: Citizen Involvement

Finding: On June 8, 2016 the Board of Commissioners adopted an Order to have the Community Development Director draft amendments to the Rural Land Development Code (RLDC) to address fences, setbacks, etc. in the Rural Residential zones. Subsequently the proposed rules were discussed at public hearings on October 31, 2016; January 30, 2017; February 6, 2017; July 19, 2017; and August 2, 2017. Additional hearings are yet to be heard on all of the proposals.

In May of 2017 voters were asked to vote on Ballot Measure 17-81. The Measure was an advisory question as to whether the county should prohibit commercial, recreational marijuana on Rural Residential land. There was almost a 50% voter turnout, and the advisory question passed by almost a 2/3 vote.

Based on the results of the advisory question, and complaints, and additional research, the Board found a need to possibly prohibit all OLCC regulated marijuana production on Rural Residential land. Therefore, the Board adopted Order 2017-034 which instructed the Community Development Director to propose rules to the effect.

Based on the numerous hearings; and upcoming hearings; resident e-mails, phone calls, and office visits; and the Ballot Measure; citizen input has been considered and is welcome.

Goal 2: Land Use Planning

Finding: Staff finds the recommended ordinance provisions help further the orderly development of residential development in the residential areas, and direct the more intensive agricultural uses to the agricultural areas, where land is more open, has more suitable soils, and poses fewer neighborhood incompatibilities.

Goal 3: Agricultural Lands

Finding: The proposal allows for personal agricultural crops in residential areas, while allowing more plants and less regulation in the areas set aside strictly for agriculture. It allows for alternative crops which maximize the utilization of productive soils or remote areas where the crop/large concentrations of plants could otherwise be considered offensive if grown in denser residential areas.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources

Finding: Directing production to the more open areas of the county allows these areas to be used consistently with their soil potential. Preventing large grows in residential areas preserves vistas and undisturbed natural resources, like forests. At one time most of the Rural Residential land was zoned for agriculture—which would have allowed intense cropping. However, a team of individuals petitioned and successfully got the agricultural land rezoned to Rural Residential, thereby ‘forfeiting’ the right to intensively grow marijuana. This action resulted in 73% of the county now being zoned out of the potential for commercial agriculture (73% of private land is now zoned for residential use).

Goal 6: Air, Water and Land Resources Quality

Finding: Many residents have complained about the odor from the grow sites. Minimizing the potential for large grows of the crop, minimizes the potential for what some perceive as air pollution. Directing the large crops to areas where farming odors are protected by Right to Farm laws, is consistent with the Comprehensive Plan, and offers the grower protections. Restricting water usage in the residential zones will help minimize complaints of low water volume and wells going dry.

Goal 7: Areas Subject to Natural Disasters and Hazards

Finding: Typically there are few homes in slide areas or flood prone areas. Directing cultivation to these, and agricultural areas, preserves those lands better suited for development so they can actually be used to address the housing crisis in Oregon.

Goal 8: Recreational Needs

Finding: Some do find large marijuana fields and the industry a tourism attraction. Allowing the crop to be grown in open, agricultural areas provide for a more satisfactory experience in viewing the crop, vs. scattering grow sites amongst homes. The county has also heard complaints that residents are intimidated and fearful and no longer walk on their country roads. Directing the crop away from residential areas will help the denser populated areas to be able to recreate and get exercise. Keeping the agricultural land in crops also allows for easy conversion to parks or other recreational needs, if warranted in the future.

Goal 9: Economic Development.

Finding: State data show the average wage of an agricultural worker in the marijuana industry makes slightly more than \$29,000 a year. Requiring grows to be OLCC regulated, to be legal in Josephine County, results in better tracking of employment data and legitimate labor. Having better documentation allows the large farms to thrive in the larger lot, agricultural areas, providing for an industry that ‘plays by the same rules’ as other legitimate industries. Also, larger grows that do not conflict with neighboring properties have greater potential to thrive and add to the local economy, not to mention providing jobs to the ancillary uses that are necessary for a large successful farm (contractors, soil businesses, etc.).

Goal 10: Housing

Finding: Based on population projections, the unincorporated areas of the county need to provide housing for 155 people per year to keep up with population growth. Limiting crop production in the residential zones makes more lots available for development. Lastly, for some, stricter management rules may mean more investment in housing options.

Goal 11: Public Facilities and Services

Finding: By ensuring residentially zoned lands remain available for residential development, the provision of services remains cost effective. Cost of Community Service Studies show residential land demands more in services than it pays for services, so compact development is ideal. For example, it is preferable to have homes together so school bussing can be more efficient vs. ‘hop scotching’ large areas. In addition, by not allowing commercial grows on RR1, RR2.5 and RR5, lots closer to the more urbanized areas, where growth is expected, and someday service infrastructure may be

needed, the areas are unencumbered with crops and are more readily available for connection to infrastructure or the more efficient delivery of services.

Goal 12: Transportation

Finding: Many residential roads are not equipped to handle heavy trucks (soil, delivery). Keeping heavy truck traffic off residential roads helps maintain the integrity of the road for a longer period of time, thereby reducing the need for tax dollars for repairs. By keeping heavy trucks off private roads and easements means non-marijuana producing neighbors do not have to pay for a cost they did not incur. By limiting crop production in residential zones, traffic should not increase and the rural residential character upheld.

Josephine County Comprehensive Plan - Applicable Goals

Goal 1: Preserve and maintain agricultural lands and rural character.

Finding: See State Goals 2, 3, 5.

Goal 3: Allocate land for housing.

Finding: See State Goal 2, 7, 10 and 11.

Goal 4: Plan and develop facilities and services that are needed, and can be afforded.

Finding: See State Goal 11 and 12.

Goal 5: Diversify and stabilize the economy.

Finding: See State Goal 9.

Goal 6: Prevent loss of life and property by hazards.

Finding: See State Goal 7. In addition, addressing fire safety concerns, as proposed, will help minimize fire potential, and the need for more services (e.g fire control).

Goal 7: Preserve valuable limited resources.

Finding: See State Goal 5.

Goal 8: Pollution Shall Be Controlled.

Finding: Agriculture in Oregon is protected by Right-to-Farm laws. As such, odor and noise are expected outcomes of an agricultural operation. In the agricultural areas it makes sense limitations on odor and noise be minimal, after all, those lands are where crops are supposed to be grown. On residentially zoned lots though, the primary purpose is residential use, not agriculture, and therefore managing farm outcomes help minimize land use conflicts, address environmental concerns, and helps maintain the rural residential character.

Goal 10: To depict a land use pattern to guide future uses, to implement the desires of the county and to meet the requirements of the state of Oregon.

Finding: See State Goal 2. Also, County Policy 1.B. clearly states that if you want a large, or small scale farm, it is to be on agriculturally zoned lands. As such, it can be argued that even the residentially zoned lots should not allow for agriculture. However, Josephine County has allowed some agricultural activity on its residentially zoned lands since the beginning of the zoning program (at that time rural residentially zoned lots were called ‘Suburban Residential’). Residential land (see the ‘Purpose’ section of the code) is not intended for commercial use. Limiting commercial marijuana production to non-residential lots, and guiding it towards agriculturally zoned lands, therefore supports Goal 10. By still allowing personal grows on residentially zoned lots, the original intent to allow *some* form of agriculture on the residential lots is still maintained.

Policy 1.E. clearly says the residentially zoned lands are ‘non-resource’. The state of Oregon views ‘resource’ as agricultural and forest lands. As such then, if not zoned for agriculture or forest use, the zone is considered ‘non-resource’ and not intended for agriculture. This proposed amendment to limit forms of agriculture in the Rural Residential zones supports this policy. Also, the proposal to only allow marijuana production on a lot with a home in the Rural Residential zones, supports the purpose and intent of the residential zones as outlined in the county comprehensive plan and Rural Land Development Code, that being the land be ‘residentially used’ (primary purpose of that land is residential).

Lots in residential zones are allowed much smaller lots than an agriculturally zoned lot because the intent is to provide for housing, while agriculturally zoned lots, which are larger, are set aside and reserved for agriculture and open space. If commercial agriculture *were* allowed on a residentially zoned lot, it would be exceeding the physical capability of that land to accommodate both residential and commercial agricultural land uses. Therefore, not allowing commercial agriculture on RR1, RR2.5 and RR5 lots ensures the physical capacity of the lot is not jeopardized, and therefore supports Policy 1.E.

Goal 11: Plan shall be maintained and updated.

Findings: As trends come and go, and new economic opportunities arise, rules should be amended to reflect current trends and associated acceptable standards.

Goal 12: Procedures shall be established for the planning and zoning of unincorporated areas.

Finding: The unincorporated areas of Josephine County rely on the county to plan and protect their land through zoning. The proposed text amendments follow all processes outline in the RLDC.

Discussion

See attachment, *Staff Summary*.

Recommendations of Planning Department

See attachment, *Staff Summary*.