

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Policy Session Worksheet

Presentation Date: 7/13/22 **Approx. Start Time:** 10:30 a.m. **Approx. Length:** 1 hour

Presentation Title: File ZDO-283: FY 2022 Minor and Time Sensitive Comprehensive Plan and ZDO Amendments

Department: Planning and Zoning Division, Department of Transportation and Development (DTD)

Presenters: Glen Hamburg, Senior Planner; Jennifer Hughes, Planning Director

Other Invitees: Dan Johnson DTD Director; Cheryl Bell, DTD Assistant Director of Development; Karen Buehrig, Long-Range Planning Manager

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Input on the set of amendments being developed as a part of the Minor and Time Sensitive Comprehensive Plan and Zoning and Development Ordinance (ZDO) Amendments package. The input falls into two categories:

- Direction related to five (5) substantive land use issues; and
- Questions or concerns about other proposed amendments summarized in Attachment A.

Staff is also requesting direction on whether to move the amendments forward to the public hearings process with the Planning Commission and the Board.

EXECUTIVE SUMMARY:

The adopted 2021-2023 Long-Range Planning Work Program includes a project titled “*Minor and Time-Sensitive ZDO Amendments*”. This project is intended to focus annually on relatively minor changes to the County’s Comprehensive Plan and Zoning and Development Ordinance (ZDO) to comply with any new state and federal mandates, clarify existing language, correct errors, or adopt optional provisions that require only minimal analysis. The last package of such “minor amendments” was Ordinance ZDO-280, which was adopted by the Board in September 2021.

This year, staff is proposing the amendments package address the five substantive issues described below, as well as the 15 more routine “clean up” measures listed in Attachment A.

This amendment package is planned for public hearings later this year. The Planning Commission held a study session on June 27, 2022, where they discussed more than a dozen issues that could be addressed with this project and provided feedback. Following is a summary of each of the five issues that generated most of the discussion.

1. Allowing public restrooms in the Rural Tourist Commercial (RTC) District as a conditional use:

The RTC District is a commercial zoning district in areas of the Mt. Hood Corridor (e.g., in Wemme/Welches, Rhododendron, and Government Camp). Currently, the zoning district does not expressly allow for public restroom facilities unless they are accessory and incidental to some other permitted land use, such as a restaurant. The only pathway for approving a “stand alone” public restroom facility in the RTC District is with an application for a similar use authorization and a finding that such a use is similar to one or more other land uses that are allowed in the zoning district.

As part of discussions occurring with the Government Camp community, Oregon Solutions, and the Board, staff committed to bring forward the consideration of an allowance for “stand alone” public restroom facilities that are not necessarily accessory and incidental to another permitted land use, but which nonetheless may help to support local tourism. At the June 27 study session, staff and the Planning Commission discussed allowing such restroom facilities as a conditional use. Conditional uses require a public hearing and consideration of factors such as the characteristics of the subject property, potential impacts on the surrounding area, and consistency with existing goals and policies of the Comprehensive Plan.

Members of the Planning Commission support moving this proposal forward for public hearings.

2. Aligning the County’s requirements for forest template dwellings with the minimum requirements under state law:

The Ag/Forest (AG/F) and Timber (TBR) zones implement the Comprehensive Plan’s Forest land use plan designation, a designation intended to: conserve forestlands for commercial forestry practices; protect watersheds, wildlife, and fisheries resources; minimize wildfire hazards and risks; and enhance and protect other environmentally sensitive areas. Residential development in the AG/F and TBR Districts is restricted and generally requires approval of a land use application showing that criteria for the limited opportunities for residential development are satisfied.

One of the pathways for approval of a forestland dwelling is through the “template test” methodology. Broadly, the template test considers the amount of parcelization and residential development that existed on January 1, 1993, in a 160-acre rectangular area centered on the subject property; if there were enough separate lots of record and lots of record with dwellings within the area on that date, the subject property can potentially qualify for a dwelling. The number of lots and lots with dwellings within that 160-acre “template” area that are needed to qualify is based on the subject property’s soil productivity, with a minimum number established by state law.

The County’s requirements for template dwellings exceed the minimums required by state law. Specifically:

- For a template dwelling on a property with soils capable of producing 50-85 cubic feet per acre per year of wood fiber, ORS 215.750(2)(b) only requires there to be **three** lots of record in the template area with a dwelling on them on January 1, 1993, yet the County requires **four** such lots of record;

- For a property with soils capable of producing more than 85 cubic feet per acre per year of wood fiber, ORS 215.750(2)(c) only requires there to be **three** lots of record in the template area with a dwelling on them on January 1, 1993, yet the County requires **five** such lots of record; and
- The County does not currently allow lots of record larger than 80 acres, nor dwellings on lots of record larger than 80 acres, to count toward the minimum, but state law allows such lots and dwellings to count.

This issue was raised to the Board by the representative of a forestland property owner, and staff committed to bring this forward for consideration of conforming the County's requirements for template dwellings to the minimum requirements under state law. Doing so would likely allow more AG/F- or TBR-zoned properties to qualify for residential development, but it is unknown *how many* more properties could qualify or the location of such properties.

Members of the Planning Commission expressed concerns about increased residential development in forestland areas that are preserved for other priorities and where there are increased risks of wildfire and did not support moving forward with this proposal.

Staff is neutral on the issue. On the one hand, staff recognizes wildfire risks and that it is unknown how much additional residential development could result from a change in standards that have existed since the criteria for template dwellings were adopted in the 1990s. On the other hand, the Board has taken the approach for a number of years that county regulations in Forest and Agriculture districts should track with state law, and staff generally favors this consistency. Including these amendments in the draft for public notice would allow the public an opportunity to provide testimony to the Planning Commission and the Board on the relative merits of the proposal.

3. Extending the nonconforming use discontinuance period from one year to two years, while also reducing the implementation period for nonconforming use alterations from four years to two years:

A nonconforming use is the use of any structure or land that was lawful when the use was originally established, but is now prohibited under current regulations. Both state and County laws protect these "legacy" land uses by allowing them to continue, provided the use was never interrupted or abandoned since it became prohibited.

State law allows the County to establish its own criteria for determining when a nonconforming use has been "interrupted or abandoned". Currently, the County considers a nonconforming use to be interrupted if it has discontinued for 12 consecutive months, except in certain circumstances for nonconforming surface mines and nonconforming uses lost to particular wildfires, where state law establishes the discontinuance standard.

A nonconforming use that has not discontinued for 12 months can be altered, subject to certain standards. A nonconforming restaurant in a residential zone, for example, can potentially be altered to a florist shop, provided the alteration is approved in an application that shows the existing nonconforming use being altered (the restaurant) is lawful and that the proposed alteration (the florist shop) will have no greater adverse impact on the neighborhood.

Currently, the ZDO gives an applicant four years to implement an approved alteration by obtaining and maintaining certain necessary permits for development.

This existing four-year implementation period for an alteration is longer than the 12-month discontinuance period, and the ZDO is ambiguous as to whether an approved alteration can still be implemented if the nonconforming use being altered has already discontinued for 12 months. This ambiguity can imply a need for applicants to get additional – and costly – determinations by the County that their existing, previously-verified nonconforming use has *still* not discontinued for 12 consecutive months before the four-year implementation period for an approved alteration expires.

Staff have heard from members of the public that the 12-month discontinuance period is too short, particularly when the law does not consider the reasons for the discontinuance in most cases. A nonconforming business, for example, is at risk of being considered “discontinued” if it is unable to operate for 12 consecutive months, even if the reasons it cannot operate are because of a public health emergency, hiring difficulties, or supply chain issues. At the same time, staff observes that two years is typically enough time for applicants to implement an approved nonconforming use alteration. The County also already allows one two-year time extension on approved alterations and, if the approved alteration is still not implemented within the time extension period, an applicant can re-apply for new alteration approval.

Making the discontinuance period and the implementation period the same would resolve these issues.

Members of the Planning Commission support moving this proposal forward for public hearings.

4. Expanding allowances for who can initiate a land use application for a project in a public road right-of-way or public utility easement:

The ZDO requires that land use applications be initiated by (as demonstrated by a signature) the owner or contract purchaser of the subject property, or the agent of the owner or contract purchaser. These requirements can be burdensome for larger-scale projects that span extensive distances, such as public utility lines in road rights-of-way (ROW) or recorded public utility easements (PUE) wherein numerous individual parties may “own” the land already within the dedicated ROW or recorded PUE and signatures from all owners must be collected by the applicant. They could also allow an individual property owner to delay an essential public infrastructure project in a ROW or PUE that has already been lawfully established for such uses.

Other jurisdictions have exceptions from their standard application initiation and signature requirements for public and government agencies, particularly those that have the power of eminent domain.

Members of the Planning Commission support moving this proposal forward for public hearings.

5. Modifying the ZDO’s definition of “lot of record”:

There are various ways to refer to a unit of land, depending on the purpose for the reference. For example, a “tax lot” is a unit of land with boundaries established by the tax assessor for their various tax assessment-related purposes. The ZDO, however, generally

uses the term “lot of record” to refer to a unit of land for development purposes. The boundaries of a tax lot do not necessarily correspond to the boundaries of a lot of record; in other words, a unit of land defined for tax assessment purposes may not be separately developable according to the ZDO.

In order to determine whether a property (e.g., a given tax lot) is separately developable according to the ZDO, or whether it can be divided or have its boundaries adjusted, it is necessary to determine whether the property is a separate lot of record. A “lot of record” is currently defined in the ZDO as:

A lot, parcel, other unit of land, or combination thereof, that conformed to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed or contract creating the lot, parcel or unit of land was signed by the parties to the deed or contract; except:

- 1. Contiguous lots under the same ownership when initially zoned shall be combined when any of these lots, parcels or units of land did not satisfy the lot size requirements of the initial zoning district, excluding lots in a recorded plat.*
- 2. A unit of land created solely to establish a separate tax account, or for mortgage purposes, that does not conform to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed, tax account or contract creating it was signed by the parties to the deed or contract, unless it is sold under the foreclosure provisions of ORS Chapter 88.*

Determining whether a given unit of land meets this definition often requires a significant amount of research involving a review and documentation of the full ownership and zoning history of the subject property and adjacent properties, as well as an interpretation of old zoning codes, deed records and land use decisions. Prospective development can be on hold for an extended period of time until the lot of record status is determined.

Moreover, the County’s existing lot of record definition treats some properties differently depending on who owned them, and how they were described on deed records, decades ago. Under the current definition:

- If two contiguous lots were owned by the same person on the date those properties were first zoned, and if one of those two lots was smaller than that initial zone’s minimum lot size, they would be consolidated as one lot of record, even if they have always been described on separate deeds;
- Conversely, if the same two contiguous lots were under separate ownership at initial zoning, they would not be consolidated and would be considered separate lots of record, even if one of the lots was undersized at initial zoning. “Separate ownership” could mean: the two lots were owned by separate unrelated parties; one of the lots was owned by one spouse and the other owned by the other spouse; or even one person owning one of the lots on their own while owning the other lot together with their spouse or anyone else.

Consolidation of separately deeded properties for lot-of-record-purposes limits development potential. Consolidation based on past ownership history may also be considered unfair. In addition, in some cases, it is not completely clear what the minimum lot size was at first zoning or County records from that era are incomplete regarding the precise date of first zoning.

With amendments to the lot of record definition, the County could repeal the “lot consolidation provision”, affording more uniform development rights that aren’t based on who owned the property in the past, sometimes half a century ago. In many cases, it would also make the process of determining a property’s lot of record status more efficient, as it would reduce the need to review the ownership history of adjacent properties. In addition, staff has determined that many other jurisdictions in Oregon do not include a “lot consolidation provision” similar to Clackamas County’s.

Repealing the “lot consolidation provision” would allow more properties to qualify for development or other lot-of-record-specific land uses, including properties where previous or current owners have long understood that these opportunities do not exist. Unfortunately, due to the property-specific nature of the lot of record definition, it is not feasible to determine, or even to estimate, the number of additional developable lots of record that would result.

In amending the lot of record definition, the County could also “sunset” an existing provision that establishes as a lot of record a unit of land sold under foreclosure provisions of ORS Chapter 88. Staff have not identified authority under state law to have such a provision, particularly where it would override state-mandated minimum lot sizes, and have not found through our research another jurisdiction that has this allowance.

Members of the Planning Commission support moving this proposal forward for public hearings.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

The adoption process for these amendments is included in the current budget.

What is the funding source? Existing General Fund budgeted for the Planning and Zoning program

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department’s Strategic Business Plan goals?

The project aligns with the Long-Range Planning Program’s purpose of providing land use and transportation plan development, analysis, coordination, and public engagement services to residents; businesses; local, regional, and state partners; and County decision-makers so they can plan and invest based on a coordinated set of goals and policies that guide future development.

- How does this item align with the County’s Performance Clackamas goals?

The recommendations in this worksheet align with the Performance Clackamas goals to “**Build Public Trust through Good Government**” and “**Grow a Vibrant Economy**”.

LEGAL/POLICY REQUIREMENTS:

With the possible exception of repealing the foreclosure provision in the lot of record definition, none of the five substantive issues described in this worksheet are required by law or policy to be addressed. Attachment A identifies 15 additional, less substantive issues that staff recommends be addressed in ZDO-283; Issues #11 and #13 on that attachment (related to outdoor mass gatherings, renewable energy facility notification, and replats in natural resource zones) would align with existing state requirements.

PUBLIC/GOVERNMENTAL PARTICIPATION:

- Making these “minor amendments” to the County’s land use regulations annually is included in the Long-Range Planning Work Program, which was adopted by the Board, after public outreach and a Planning Commission public meeting.
- A public study session was held with the Planning Commission on June 27, 2022, at which the five substantive issues outlined in this worksheet were discussed.
- Public notice will be provided, as required by law, for any proposed amendments to the ZDO and Comprehensive Plan that come before the Planning Commission and Board for formal consideration at a public hearing.

OPTIONS:

- (1) Direct staff to draft amendments consistent with the Planning Commission recommendations in this worksheet and Attachment A.
- (2) Direct staff to draft amendments consistent with the Planning Commission recommendations in this worksheet and Attachment A, except also include amendments to the “forest template test” criteria, and proceed to the public hearing phase.
- (3) Direct staff to make Board-identified changes to the proposals in this worksheet or Attachment A, and then proceed to the public hearing phase.
- (4) Direct staff to take no further action on this project.

RECOMMENDATION:

Staff Recommends **Option 2 above**: Direct staff to draft amendments consistent with the Planning Commission recommendations in this worksheet and Attachment A, except also include amendments to the “forest template test” criteria, and proceed to the public hearing phase.

ATTACHMENTS

Attachment A, Summary of Additional Amendments Proposed for Consideration under File ZDO-283

Attachment B, Policy Session PowerPoint

SUBMITTED BY:

Division Director/Head Approval *Jennifer Hughes*

Department Director/Head Approval _____

County Administrator Approval _____

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| For information on this issue or copies of attachments, please contact: Glen Hamburg @ 503-742-4523 |
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ATTACHMENT A

Summary of Additional Amendments Proposed for Consideration under File ZDO-283

1. Expressly allow electronic signatures on land use applications.
2. Streamline administrative processes and eliminate application requirements for construction management plans (CMPs), without changing standards.
3. No longer require an application for Habitat Conservation Area (HCA) map verification when a developer chooses to concur with adopted HCA maps.
4. Allow for consolidated applications for development within both an HCA and Water Quality Resource Area (WQRA) in order to streamline administrative processes and eliminate costs associated with multiple separate applications, without changing standards or criteria.
5. Codify an existing policy allowing accessory buildings/uses on separate but contiguous lots of record under the same ownership.
6. Expressly waive lot line setback requirements for lot lines separating lots of record under common ownership, under limited circumstances.
7. Reduce the number of pages automatically mailed with a notice of a decision on a land use application by including the legally mandated information and providing options for obtaining the full decision.
8. Clarify that “lot coverage” does not apply to architectural features.
9. Clarify existing regulations and policies related to nonconforming uses.
10. Clarify that a “sidewalk” includes a concrete pedestrian facility along not just a public road but also along a private road.
11. Codify existing state laws related to outdoor mass gatherings in natural resource zones and existing notification requirements for renewable energy facilities.
12. Clarify that a recreational vehicle is considered a dwelling when permitted as a temporary dwelling.
13. Identify that a replat in a natural resource zone that does not create additional lots of record is already subject to certain state regulations necessitating a Type II application process.
14. Make the terminology used in the ZDO to reference setback areas more consistent.
15. Correct typographic errors, inconsistent terminology, and outdated references, and repeal any standards identified as unenforceable.

ZDO-283: FY 2022 MINOR AMENDMENTS



Board of County Commissioners Policy Session
July 13, 2022

ZDO-283

Legislative amendments to:

1. Comply with mandates
2. Clarify existing language and correct errors
3. Adopt optional provisions requiring minimal analysis

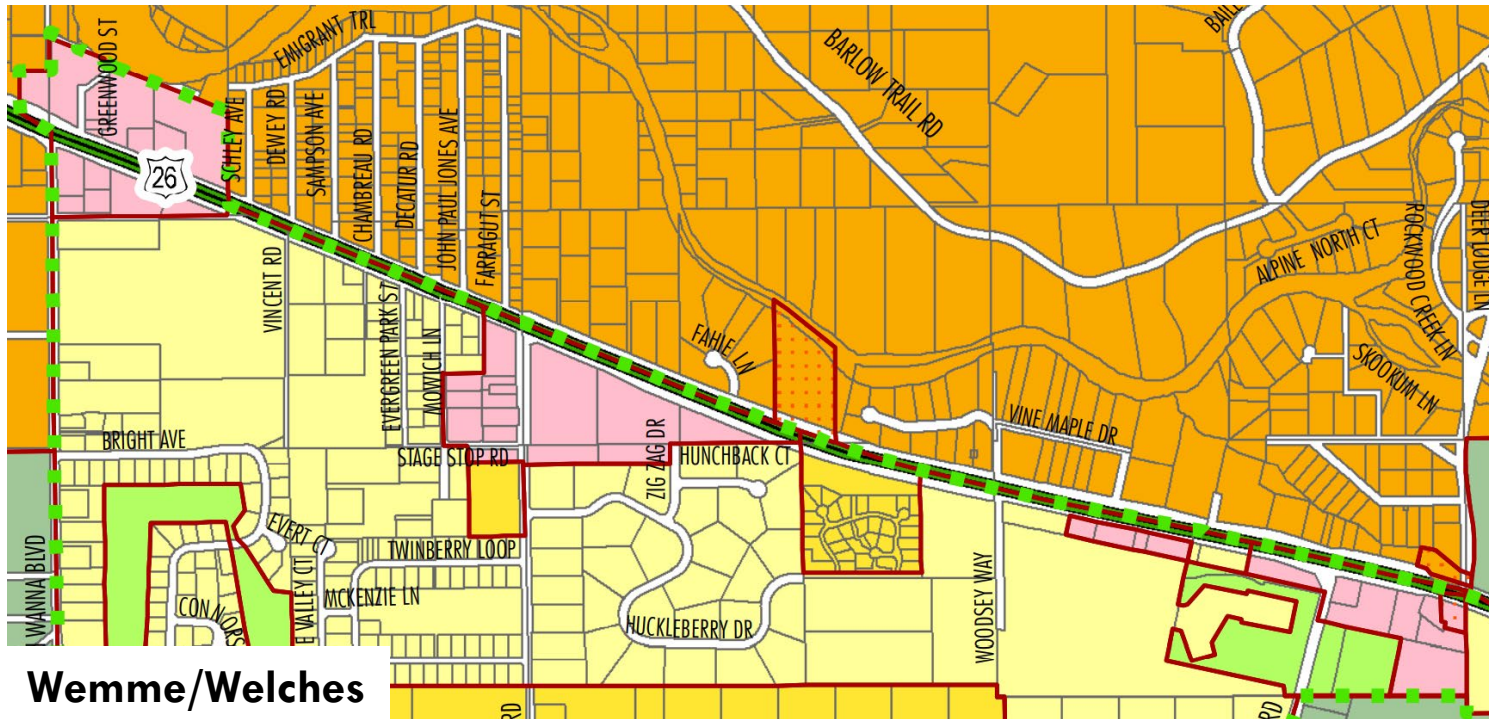
OPTIONS FOR CONSIDERATION

1. Allow public restrooms in the RTC District as a conditional use



OPTIONS FOR CONSIDERATION

1. Allow public restrooms in the RTC District as a conditional use



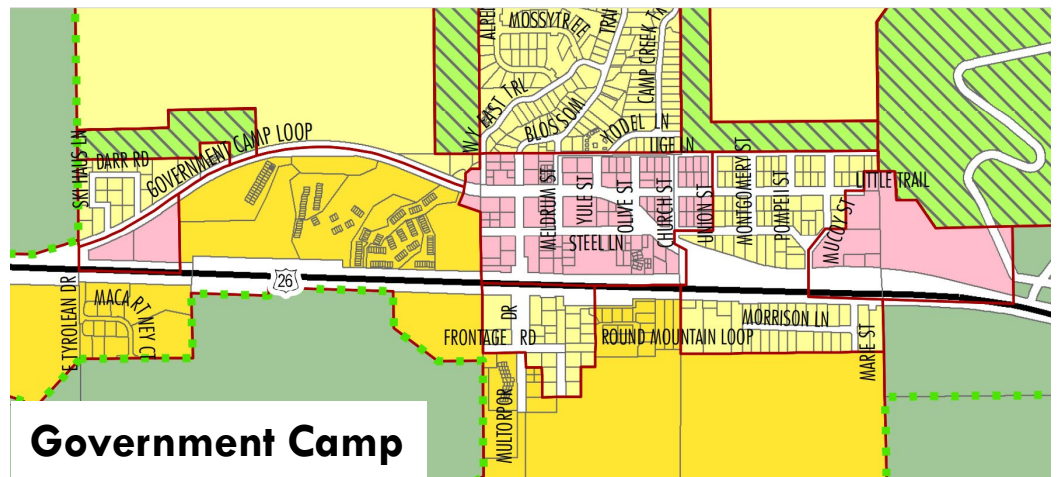
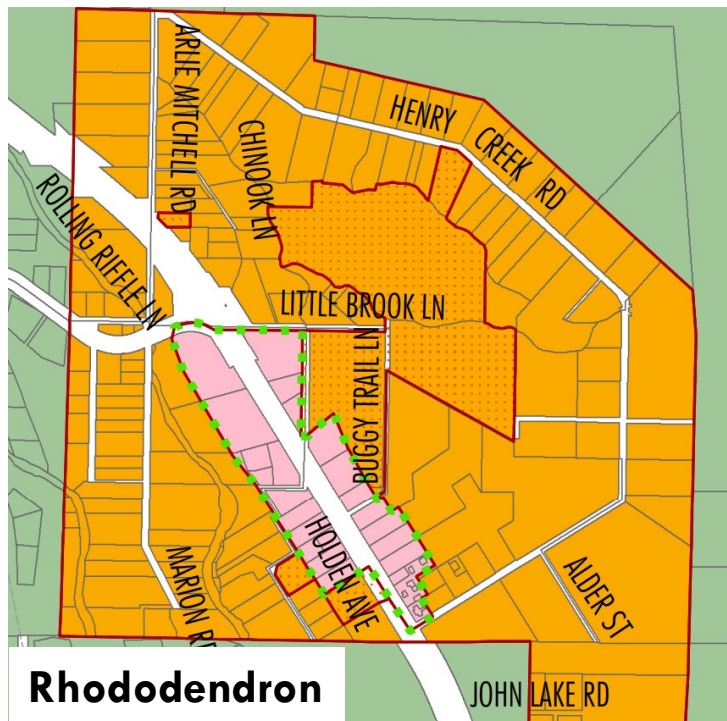
Wemme/Welches

 Rural Tourist Commercial (RTC)

ZDO-283 [4]

OPTIONS FOR CONSIDERATION

1. Allow public restrooms in the RTC District as a conditional use



 Rural Tourist Commercial (RTC)

OPTIONS FOR CONSIDERATION

1. Allowing public restrooms in the RTC District as a conditional use

Would require:

- Consideration of suitability of subject property, surrounding area, and applicable Comp Plan policies
- Consistency with existing design standards
- Public hearing

OPTIONS FOR CONSIDERATION

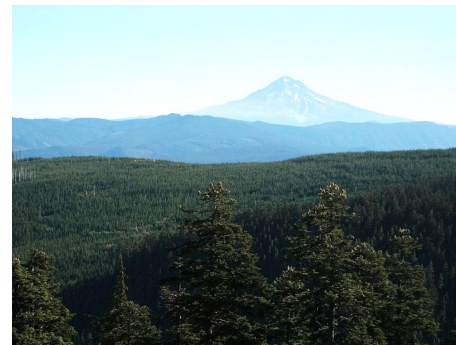
1. Allowing public restrooms in the RTC District as a conditional use

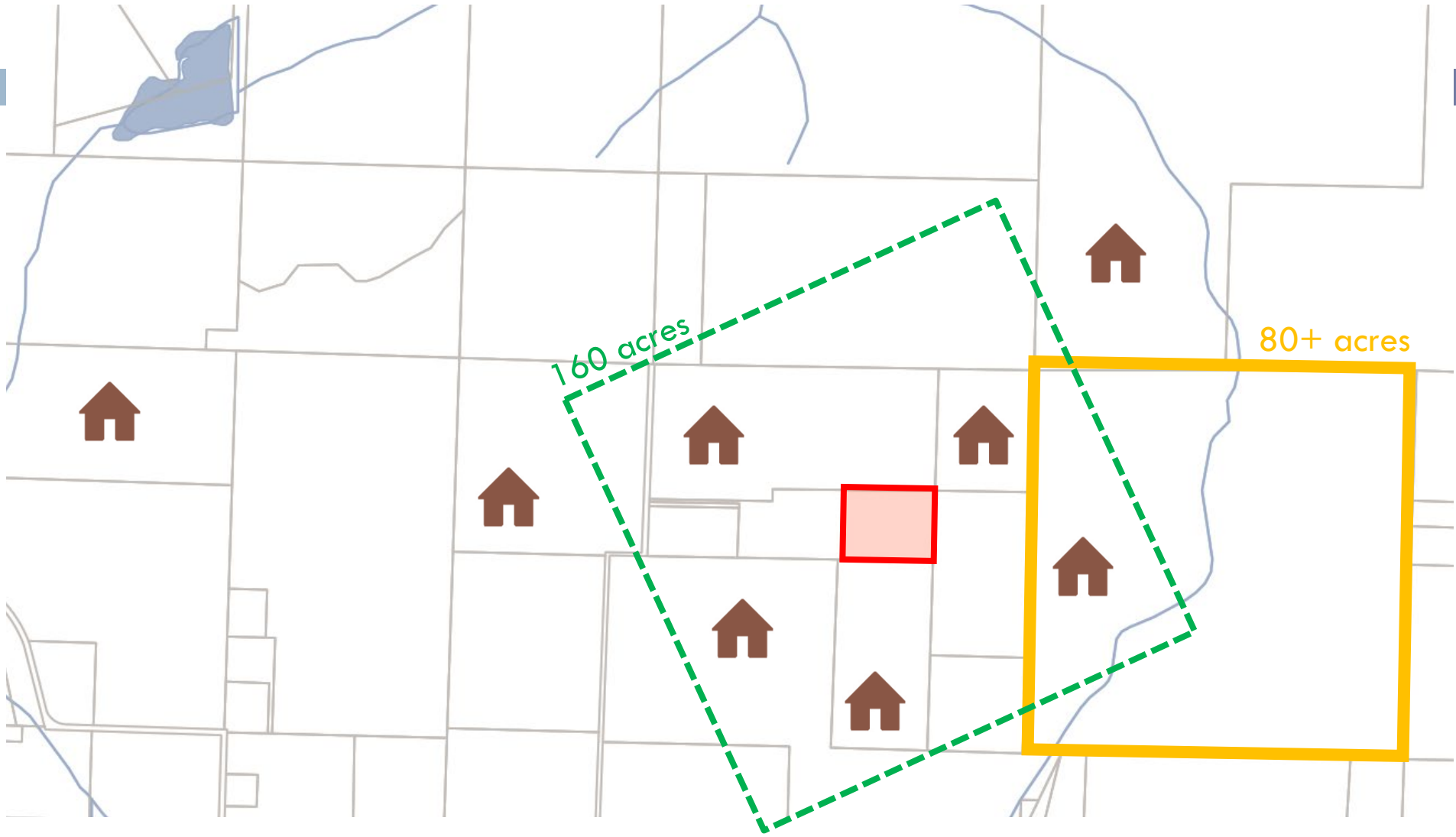
Options:

- a. *Allow as a conditional use*
- b. *Continue to prohibit (except if approved as a similar use)*

OPTIONS FOR CONSIDERATION

2. **Aligning the County's requirements for forest template dwellings with minimums required under state law**





OPTIONS FOR CONSIDERATION

2. Aligning the County's requirements for forest template dwellings with minimums required under state law

| <i>Within template, currently:</i> | <i>Option:</i> |
|---|---|
| 4 or 5 lots with dwellings (depending on land productivity) that existed January 1, 1993 | Just 3 such lots with dwellings |
| Lots >80 acres, and dwellings on lots >80 acres, not counted | Count them |

OPTIONS FOR CONSIDERATION

2. Aligning the County's requirements for forest template dwellings with minimums required under state law

- Existing criteria since mid-1990s
- With change, more forestland properties could qualify for residential development
- How many more? Unknowable.
- Concerns of more residential development in forestlands
- Consistent with county's practice in more recent years of conforming its code to state law in natural resource zones

OPTIONS FOR CONSIDERATION

2. Aligning the County's requirements for forest template dwellings with minimums required under state law

Options:

- a. *Reduce the County's requirements to the state's minimums*
- b. *Retain existing requirements*

OPTIONS FOR CONSIDERATION

3. Extending the nonconforming use *discontinuance* period from 1 year to 2 years

+

Reducing nonconforming use *alteration* implementation period from 4 years to 2 years

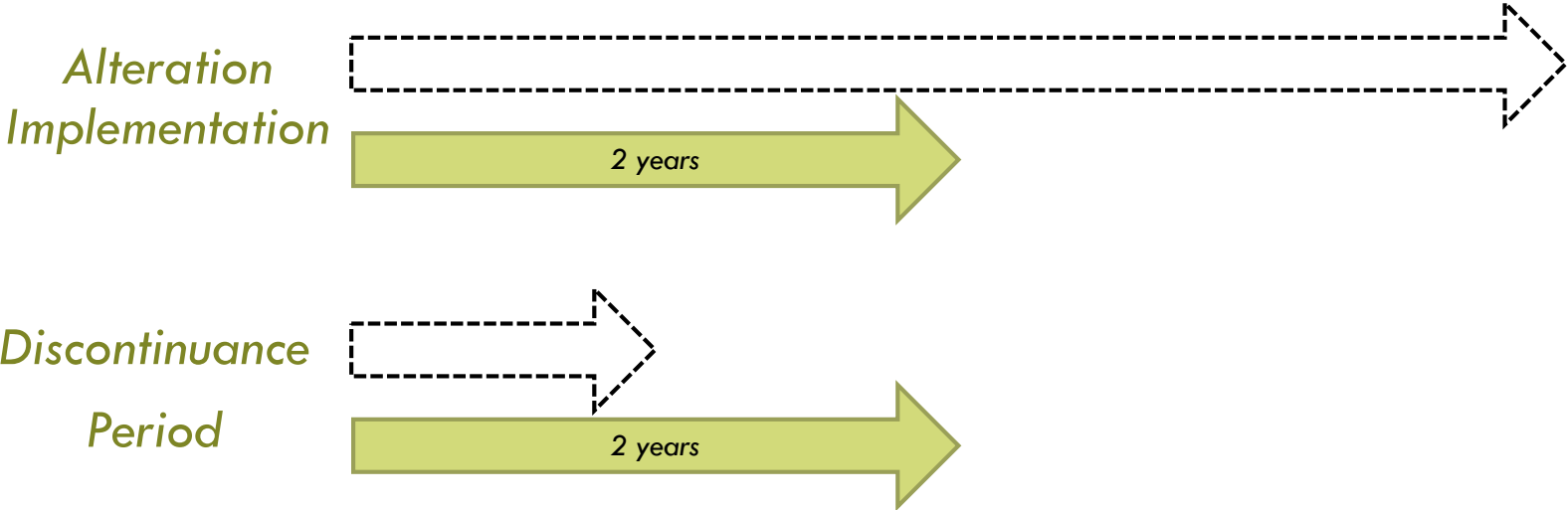


OPTIONS FOR CONSIDERATION



What if discontinued before implemented?

OPTIONS FOR CONSIDERATION



OPTIONS FOR CONSIDERATION

3. Extending the nonconforming use *discontinuance* period from 1 year to 2 years
+
Reducing nonconforming use *alteration* implementation period from 4 years to 2 years

Options:

- a. *Extend discontinuance period to 2 years + reduce alteration implementation period to 2 years*
- b. *Extend discontinuance period to 2 years, but retain 4-year alteration implementation period*
- c. *Make no changes*

OPTIONS FOR CONSIDERATION

4. Expanding allowances for who can initiate an application for a project in a right-of-way or PUE, and specify who must sign such applications



OPTIONS FOR CONSIDERATION

4. Expanding allowances for who can initiate an application for a project in a right-of-way or PUE, and specify who must sign such applications

Options:

- a. *Allow land use applications for projects in right-of-way or PUE to be initiated and signed by relevant public or government agency*
- b. *Continue to require applications for such projects to be initiated and signed by all owners of the “underlying property”*

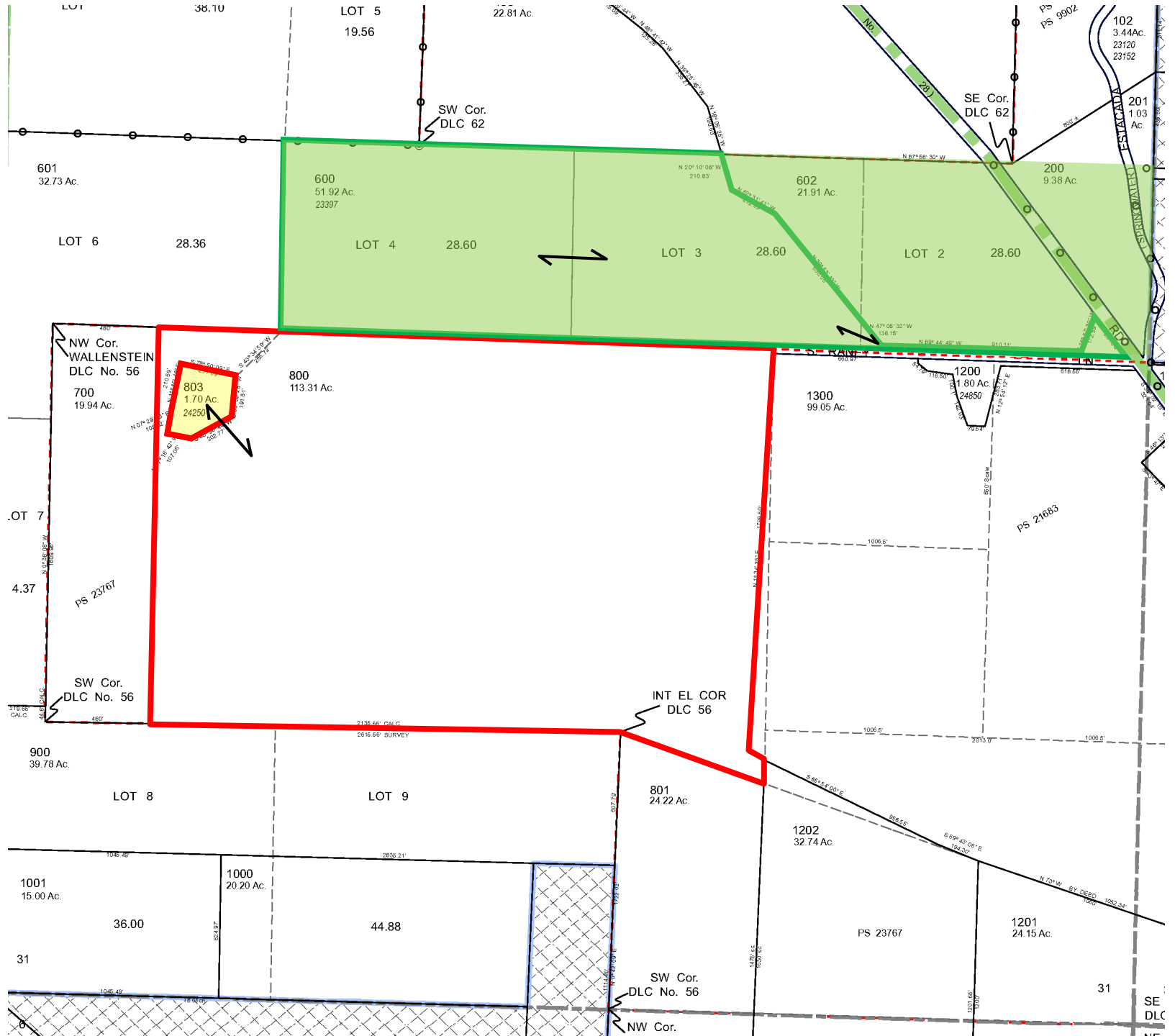
OPTIONS FOR CONSIDERATION

5. Modify the definition of “lot of record”

Ways to refer to a unit of land:

*Not always
synonymous*

- “Tax lot” (for assessment purposes)
- “Discrete parcel” (for ownership/sale purposes)
- “Lot of record” (for development purposes)



601
32.73 Ac.

LOT 6
28.36

600
51.92 Ac.
23307

LOT 4
28.60

602
21.91 Ac.

LOT 3
28.60

200
9.38 Ac.

LOT 2
28.60

NW Cor.
WALLENSTEIN
DLC No. 56

700
19.94 Ac.

803
1.70 Ac.
24250

800
113.31 Ac.

LOT 7

4.37

PS 23767

SW Cor.
DLC No. 56

900
39.78 Ac.

LOT 8

LOT 9

INT EL COR
DLC 56

1300
99.05 Ac.

1200
1.80 Ac.
24850

PS 21683

1001
15.00 Ac.

36.00

1000
20.20 Ac.

44.88

801
24.22 Ac.

1202
32.74 Ac.

PS 23767

1201
24.15 Ac.

31

SW Cor.
DLC No. 56

NW Cor.

31

SE
DLC

OPTIONS FOR CONSIDERATION

5. Modify the definition of “lot of record”

A lot, parcel, other unit of land, or combination thereof, that conformed to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed or contract creating the lot, parcel or unit of land was signed by the parties to the deed or contract; except:

- 1. Contiguous lots under the same ownership when initially zoned shall be combined when any of these lots, parcels or units of land did not satisfy the lot size requirements of the initial zoning district, excluding lots in a recorded plat.*
- 2. A unit of land created solely to establish a separate tax account, or for mortgage purposes, that does not conform to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed, tax account or contract creating it was signed by the parties to the deed or contract, unless it is sold under the foreclosure provisions of ORS Chapter 88.*

OPTIONS FOR CONSIDERATION

5. Modify the definition of “lot of record”

Why?

- Clarity
- Research complexity, costs, and delays
- Fairness question with lot consolidation provision?
- Consistency with other jurisdictions and state-required minimum lot size requirements

OPTIONS FOR CONSIDERATION

5. Modify the definition of “lot of record”

Options:

- a. *Modify to: no longer require contiguous and separately deeded properties under same ownership at initial zoning be combined as one lot of record (even if any were “undersized”); and “sunset” the existing foreclosure provision*
- b. *Continue to require contiguous and separately deeded properties under same ownership at initial zoning be combined as one lot of record; and treat properties foreclosed under ORS Chapter 88 as separate lots of record*

THANK YOU

