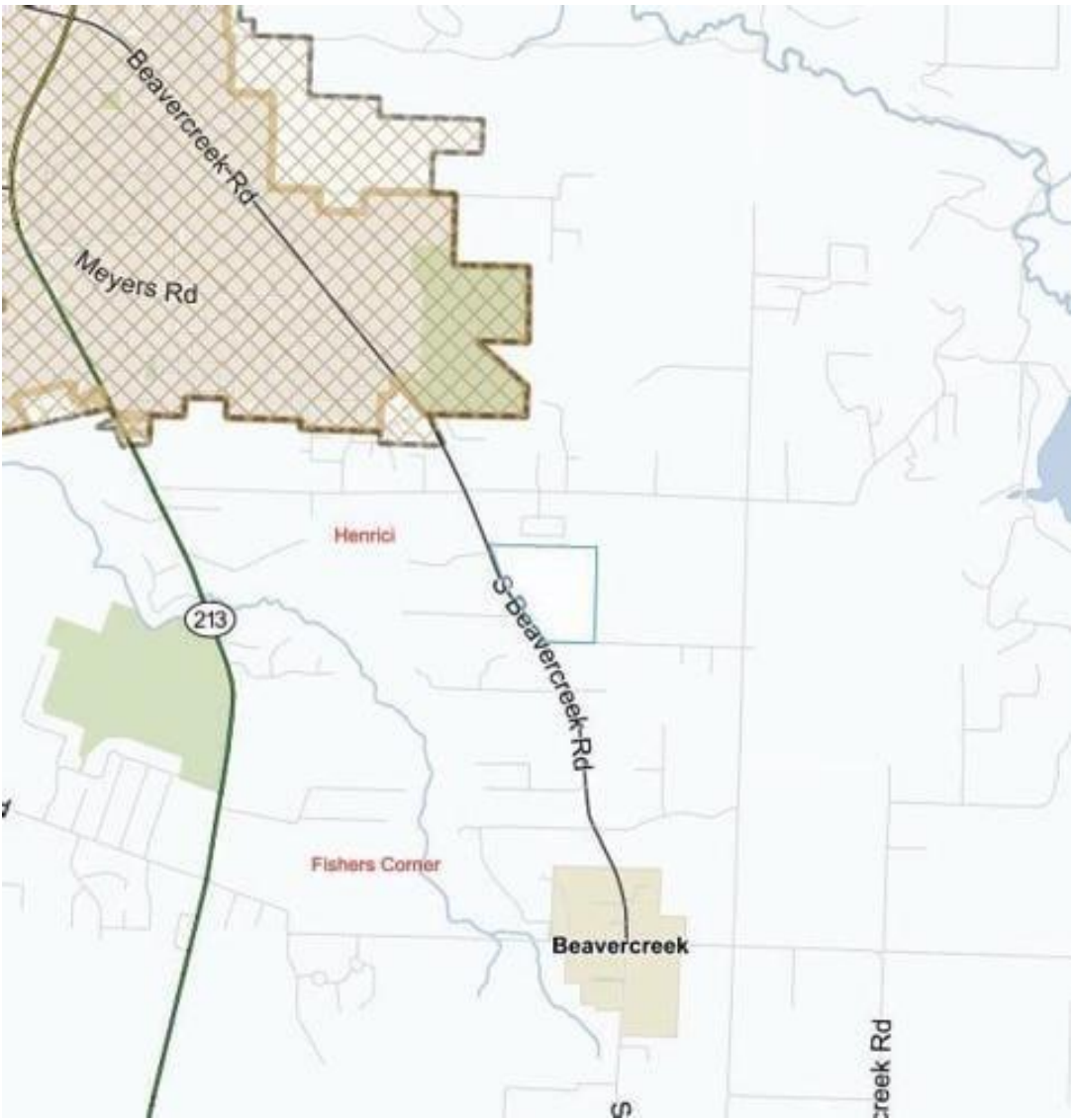


# Clackamas County, development commission in court over upzoning of rural land near Oregon City

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The Land Conservation and Development Commission agreed to appeal **Clackamas County's approval** of a zone change for **56 acres of land near Oregon City and outside of the urban growth boundary**.

Courtesy photo: LCDC

Clackamas County and the Oregon Land Conservation and Development Commission disagree about the up-zoning of certain lands outside the urban growth boundary, which may pave the way for denser residential development south of Oregon City and around the community of Beaver Creek. This dispute has resulted in cases that have reached the Oregon Court of Appeals and the Land Use Board of Appeals.

At an LCDC meeting June 27, the commission decided to appeal the county's approval of a zone change for rural land south of Oregon City and near the urban growth boundary. Specifically, Clackamas County approved a zone change for 56 acres of land from rural residential zone RRF-5 to rural residential zone RA-2 to pave the way for a **28-lot subdivision**. The current zoning designation would allow for 11 lots.

The commission has also contested the approval of a similar decision regarding a county zone change for 110 acres in Clackamas County south of Oregon City from a 10-acre to 2-acre minimum lot size. No

development has been proposed regarding that zone change, but up to 55 lots for detached single-family homes could be allowed if approved.

LUBA sided with the commission in a May 31 ruling and that case is headed for consideration by the Oregon Court of Appeals.

Is an exception required?

The crux of the issue is the county's approval of these zone changes without granting an exception to Goal 14 of the state's land use planning requirements related to urbanization.

"An 'exception' is essentially a variance: a comprehensive plan provision that allows a local government to waive compliance with a statewide land use planning goal for specific properties or situations," the LCDC staff report reads.

According to state law, a government can adopt an exception when certain requirements are met including: when the proposed uses are compatible with adjacent uses, areas that don't require the exception can't accommodate the use and when "environmental, economic, social and energy consequences" from use of the site aren't significantly more adverse than a typically-allowed proposal.

Urban growth boundary implications

The state created its urban growth boundary to organize areas where dense development could take place while protecting agricultural and natural land.

Kelly Reid, a metro area representative for the commission, said that allowing urban development outside of and near a growth boundary raises a host of issues and that these proposals could too.

"Rural development on smaller lots, 2 acres and smaller, especially when it's near an urban growth boundary, is problematic for a number of reasons. It effectively defeats the purpose of the UGB. Urban residents will locate on the cheaper land on the urban fringe ... it puts greater demand on urban services without the accompanying taxes and fees," she said at the commission meeting.

While the state is working to address a shortage of housing in Oregon, the commission also asserted that residential developments outside of the urban growth boundary are not considered "needed housing."

"For the past 50 years, the focus of Oregon's housing policy has been to provide the needed housing in urban — and not rural — areas. There are multiple reasons for this policy, both urban-focused (e.g.,

efficient provision of needed public facilities and services) and rural focused (e.g., protection of the state's farm and forest economies from the negative impacts of excessive rural residential development)," the commission's staff report reads.

One challenge that both sides have pointed out, however, is that the state generally considers 1-acre lot minimums to be "urban" and 10-acre lots to be rural and zoning between one and 10 acres per lot falling within a gray area.

County says zoning changes don't mandate exception

Regardless of these issues, the county asserts that a goal exception is not required in these two cases, citing a 2007 LUBA decision related to a Curry County case clarifying that the densification of rural land from 10-acre lot minimums to 5 did not need a goal exception when a related comprehensive plan remains intact. The county contends that the goal exception would also not be needed for zoning changes from 10 or 5-acre lot minimums to 2. Further, the county has said that the proposed uses for these projects are rural, not urban, because they wouldn't substantially impact urban services like water and school districts nor the growth boundary itself.

"The County has one Rural land use designation identified in the Comprehensive Plan, which includes three minimum lot sizes (2 acre, 5 acre and 10 acre) with thresholds for changing from one minimum lot size to another. This is very similar to how Curry County's Rural plan designation is set up, except that they did not have a 2-acre minimum lot size acknowledged for consistency with post-1986 Curry County Goal 14 requirements. As such, County staff asserts the carve out situation LUBA created in LUBA 503, 2007 is applicable to Clackamas County and that, in this particular case, a Goal 14 exception is not explicitly required to rezone from FF-10 to RRF-5," the county staff report for the 110-acre development stated.

The staff report added: "County staff feels there is no functional or substantive difference in the structure of the Curry and Clackamas County's processes in this instance: both are applying Comprehensive Plan criteria to choose between different, acknowledged minimum lot sizes, through a process that was previously acknowledged to comply with Goal 14. And in both scenarios, the outcome is the same – rural residential development may happen at a higher density (with a smaller minimum lot size) than would have been allowed prior to the change."

However, LUBA disagreed with the county's stance and remanded the approval. LUBA said the Curry County decision showed that a goal exception wasn't required when **upzoning land from 10-acre to five-acre lot minimums but that upzoning from 10 acres to two acres was a different story.**

The county subsequently appealed LUBA's ruling to the Oregon Court of Appeals.

Public comments for the two proposals suggest that **nearby residents generally disapprove of the applications and both attracted oppositional petitions. Concerns cited included traffic issues and impacts to the environment and wildlife.**