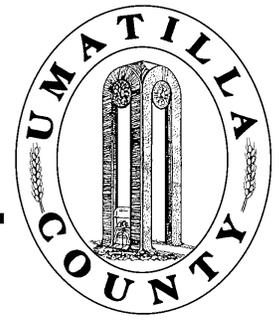


Umatilla County

Board of County Commissioners



BOARD OF COMMISSIONERS MEETING

Wednesday, May 5, 2021, 9AM

Umatilla County Courthouse, Room 130

A. Call to Order

B. Chair's Introductory Comments & Opening Statement

C. New Business:

TEXT AMENDMENT #T-21-084

Amendment of Umatilla County Development Code, incorporating the opportunity to create parcels smaller than 160 acres on Grazing Farm (GF) Zoned Land.

Property owners, Alan & Nan Heilman, propose text changes to the Umatilla County Development Code (UCDC) to incorporate the provisions of ORS 215.780(2)(e) to allow the creation of parcels between two and five acres in size, each to contain an existing dwelling, on land zoned for forest use or mixed farm and forest use (Grazing/ Farm, GF). The criteria of approval for amendments are found in UCDC 152.750-152.755.

D. Adjournment

Umatilla County

Department of Land Use Planning



DIRECTOR
ROBERT WALDHER

MEMO

LAND USE
PLANNING,
ZONING AND
PERMITTING

TO: Umatilla County Board of Commissioners
FROM: Megan Green, Planner
DATE: April 28, 2021

CODE
ENFORCEMENT

SOLID WASTE COMMITTEE

RE: May 5, 2021 Board of Commissioners Hearing
Text Amendment T-21-084

SMOKE
MANAGEMENT

CC: Robert Waldher, Planning Director

GIS AND
MAPPING

Background Information

RURAL
ADDRESSING

Property owners, Nan and Alan Heilman, propose text changes to the Umatilla County Development Code (UCDC) to incorporate the provisions of ORS 215.780(2)(e) to allow the creation of parcels between two and five acres in size, each to contain an existing dwelling, on land zoned for forest use or mixed farm and forest use (Grazing/Farm, GF). The entire statute of ORS 215.780 is included in the packet, the applicable text is bold.

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

Criteria of Approval

The criteria of approval for amendments are found in Umatilla County Development Code 152.750-152.755.

Conclusion

This matter is a legislative matter because it proposes to amend the text of the UCDC in a manner that will affect county properties located in the Exclusive Farm Use (EFU) zoning within unincorporated Umatilla County. Therefore, the County has the authority to consider and approve the text amendment.

The process of approval by the County involves review by the County Planning Commission with a recommendation to the Board of County Commissioners (BCC). The Umatilla County Planning Commission met April 22, 2021 and recommended approval of the proposed change to the Development Code, with the addition of subsection 10 under UCDC Section 152.087(E), "*The resulting parcels shall be added to the County's inventory of parcels that cannot be further divided*" and, the addition of subsection 13 under UCDC Section 152.710(G), "*The resulting parcels shall be added to the County's inventory of parcels that cannot be further divided*".

Attachments

The following attachments have been included for review by the BCC:

- County Preliminary Findings and Conclusions
- Draft Text Amendment
- ORS 215.780 – **applicable text in bold**
- Oregon DLCD Comment
- 1000 Friends of Oregon Comment

**UMATILLA COUNTY
BOARD OF COMMISSIONERS MEETING – MAY 5, 2021
UMATILLA COUNTY DEVELOPMENT CODE TEXT AMENDMENT
ALAN & NAN HEILMAN, APPLICANTS
PACKET CONTENT LIST**

- | | | |
|----|---|-------------|
| 1. | Staff Memo to Board of Commissioners | Page 1 |
| 2. | Staff Report & Final Findings | Pages 3-8 |
| 3. | Proposed Text Amendment | Pages 10-13 |
| 4. | Oregon Revised Statute (ORS) 215.780 Language | Pages 15-17 |
| 5. | Oregon Department of Land Conservation and Development
Comment, Anne Debbaut | Pages 19-20 |
| 6. | 1000 Friends of Oregon Comment, Andrew Mulkey | Pages 22-25 |

**UMATILLA COUNTY BOARD OF COMMISSIONERS
FINAL FINDINGS OF FACT AND CONCLUSIONS OF LAW
TEXT AMENDMENT, #T-21-084**

**AMENDMENT OF UMATILLA COUNTY DEVELOPMENT CODE, INCORPORATING THE
OPPORTUNITY TO CREATE PARCELS SMALLER THAN THE MINIMUM PARCEL SIZE
IN THE GRAZING/FARM ZONE, WHEN THE PARCEL CONTAINS AT LEAST TWO
LAWFULLY ESTABLISHED DWELLINGS**

1. Request

Property owners Alan and Nan Heilman propose text changes to the Umatilla County Development Code (UCDC) that would incorporate the provisions of Oregon Revised Statute (ORS) 215.780(e) to allow for the creation of parcels between 2 and 5 acres that contain existing dwellings on land zoned for forest use or mixed farm and forest use.

ORS 215.780 is not self-implementing and each county must individually adopt regulations for minimum lot or parcel sizes. In support of this, the applicant has submitted the required application and supporting documents that provide the proposed text changes within UCDC that will implement a portion of the statute, subsection (e). Therefore, the County has the authority to consider and approve the text amendment.

2. Procedural Matters

A. Categorization of this Matter

This matter is a legislative matter because it proposes to amend the text of the UCDC in a manner that will affect all county properties located in the Grazing/Farm (GF) Zone within unincorporated Umatilla County.

B. Post-Acknowledgment Amendment

This legislative amendment is an amendment to the County's acknowledged 1983 Zoning Ordinance. ORS 197.610(1) and OAR 660-018-0020(1) require that the County provide notice to the Director of the Oregon Department of Land Conservation and Development ("DLCD") at least 35 days prior to the initial evidentiary hearing. The County provided the 35-day notice to DLCD through DLCD's PAPA online portal on March 15, 2021. The County has satisfied ORS 197.610(1) and OAR 660-018-0020(1) by submitting the post-acknowledgement amendment notice so that it arrived at the office of the Director of DLCD at least 35 days prior to the initial evidentiary hearing.

UCDC 152.771(B) requires the County provide a legal notice for the Planning Commission hearing April 22, 2021 and Board of Commissioners hearing May 5, 2021 by publication in a newspaper of general circulation in the County at least ten (10) days prior to the date of the first hearing. The notice was published in the *East Oregonian* newspaper on April 10, 2021.

The County has satisfied the post-acknowledgement amendment notice required by ORS 197.610(1) and OAR Chapter 660-018-0020(1) and the legal notice of hearing publication in UCDC 152.771(B).

C. Procedure

UCDC 152.752 is entitled "Public Hearings on Amendments." This section provides, in relevant part:

"The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures in section 152.771 of this Chapter at its earliest practicable meeting after it is proposed. The decision of the Planning Commission shall be final unless appealed, except in the case where the amendment is to the text of this Chapter, then the Planning Commission shall forward its recommendation to the Board of Commissioners for final action."

The County will hold two (2) hearings for this legislative amendment, one (1) before the Planning Commission and one (1) before the Board of Commissioners.

Additionally, UCDC 152.771(A)(1) provides that a public hearing is required for legislative amendments. The procedures and requirements for a quasi-judicial hearing are not applicable to this hearing. Therefore, UCDC 152.772, which applies to quasi-judicial hearings, is not applicable to this legislative proceeding.

3. Approval Criteria

UCDC 152.751 requires that an amendment to the text of the UCDC shall comply with provisions of the Umatilla County Comprehensive Plan (the "Plan"), the Oregon Transportation Planning Rule (the "TPR"), OAR Chapter 660, division 12, and the Umatilla County Transportation Plan ("Transportation Plan"). The County also finds that because this text amendment is a post-acknowledgment amendment, ORS 197.175(1) requires that the Plan and Map amendment satisfy applicable Statewide Planning Goals (the "Goals") and other applicable administrative rules. The County finds that the UCDC does not contain substantive standards for an amendment to the UCDC text. The remainder of this section addresses the applicable approval criteria.

This UCDC provision sets forth the approval requirements for amendment to the text of the UCDC. This section requires that an amendment satisfy the Plan and the Oregon Transportation Planning Rule (the "TPR"), OAR 660, Division 12, as well as the Umatilla County Transportation Plan.

The County finds this request is to amend the text of the UCDC, specifically provisions to allow a division of land in the GF zone where at least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993. The applicant would find that this action, creating an opportunity for a land division for an existing land use (dwelling), does not further impact transportation and this criterion has been met. The TPR, OAR 660-012-0060 (1)-(3), is not implicated by this text amendment and further analysis of the Oregon Transportation Plan and Umatilla County requirements at 152.019 are not required.

Finding: The County finds that UCDC 152.751 is satisfied.

A. Applicable Statewide Planning Goals

Goal 1 Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The Umatilla County Comprehensive Plan and Development Code outline the County's citizen involvement program that includes the activities of the Planning Commission and provides for the public hearing process with its required notice provisions. These notice provisions provide for adjoining and affected property owner notice; notice to interested local, state and federal agencies; and allows for public comment to the process.

Goal 2 Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 establishes the underlining process that a county or a city needs to utilize when considering changes to their comprehensive plans and development codes. This text amendment is being requested under the Umatilla County Development Code provisions that apply to amendments, meeting the intent of Goal 2.

Goal 3 Agricultural Lands: To preserve and maintain agricultural lands.

Goal 3 requires counties to preserve and maintain agricultural lands for farm uses. Counties must inventory agricultural lands and protect them by adopting exclusive farm use zones consistent with Oregon Revised Statute 215.203 et. seq. Goal 3 also applies to mixed farm/forest zones, such as Umatilla County's Grazing/Farm (GF) zone.

Goal 3 allows for non-farm uses on lands zoned for exclusive farm use and mixed farm/forest such as dwellings under certain conditions. The applicant's proposal utilizes the language in Oregon Revised Statute 215.780(e) pertaining to the partitioning of dwellings lawfully in existence prior to November 4, 1993 when at least two qualifying dwellings are on the parcel to be partitioned, and when each new parcel contains at least one dwelling.

Goal 4 Forest Lands: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Goal 4 addresses the protection of forest lands. Goal 4 applies to this application and to the County mixed farm/forest GF zone. The proposed text amendment would allow for the partitioning of existing dwellings from resource land. Since this does not allow for the creation of new dwellings, forest lands should not be greatly impacted. The qualifying dwellings under this amendment must have been in existence prior to November 4, 1993, and therefore, should not add a new use to resource lands.

Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources: To protect natural resources and conserve scenic and historic areas and open spaces.

Goal 5 addresses historical and cultural resources with a focus on protecting sites. The proposed text amendment does not seek approval of a specific development. Any known or found cultural or historic sites would be subject to review and conditions during the application for a land use approval.

Goal 6 Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 addresses the quality of air, water, and land resources. In the context of comprehensive plan amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment will be able to satisfy applicable federal and state environmental standards, including air and water quality standards.

The proposed text amendment does not seek approval of a specific development but seeks to create the opportunity for land divisions when existing dwellings existed on the lot or parcel prior to November 4, 1993, and were not approved as resource dwellings.

Goal 7 Areas Subject to Natural Hazards and Disasters: To protect people and property from natural hazards.

Goal 7 works to address natural hazards and disasters, and through a comprehensive plan amendment process, would seek to determine if there are known natural hazards and seek to mitigate concerns. Natural hazards would be considered as part of the land use processes that would be completed during a land division or land use decision process and are not considered for this text amendment application.

Goal 8 Recreation Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

No recreation components are included in this application.

Goal 9 Economy: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 requires local governments to adopt comprehensive plans and policies that contribute to a stable and healthy economy.

Goal 10 Housing: To provide for the housing needs of citizens of the state.

Housing is not a direct consideration as part of this application.

Goal 11 Public Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Goal 11 requires local governments to plan and develop a timely, orderly, and efficient arrangement of public facilities and services. The goal provides that urban and rural development be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the area to be served.

Goal 12 Transportation: To provide and encourage a safe, convenient and economic transportation system.

Goal 12 requires local governments to provide and encourage a safe, convenient and economic transportation system, implemented through the Transportation Planning Rule. This application evaluates various requirements and has found that the Transportation Planning Rule is met through the process in place for the evaluation of land divisions and land use authorizations for dwellings.

Goal 13 Energy: To conserve energy.

Goal 13 directs local jurisdictions to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based on sound economic principles.

Goal 14 Urbanization: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Goal 14 prohibits urban uses on rural lands. This text amendment would create the opportunity to achieve a division of land to allow for the partition of existing resource dwellings. This opportunity is already provided to EFU zoned lands, and the proposed text amendment would allow for a similar opportunity for GF zoned lands as provided in ORS 215.780 (e). Since urban uses and/or new dwellings would not be permissible under the proposed text amendment, there would not be an increase in urban uses on rural lands.

Finding: Umatilla County has evaluated Statewide Planning Goals 1-14. The other five goals, 15-19, are not applicable to this application request. Umatilla County finds the goals that are applicable have been satisfied.

B. Applicable Oregon Administrative Rules

Finding: The County finds that Oregon Administrative Rule (OAR) 660-006-0026, new land division requirements in forest zones, is applicable to this request.

C. Applicable Plan Policies

The Umatilla County Comprehensive Plan includes the following provisions that are supportive of this application:

- Citizen Involvement Policy 1 states that the County should, “Provide information to the public on planning issues and programs, and encourage continuing citizen input to planning efforts.” The applicants, as a member of the community, have submitted this application for the Planning Commission and Board of Commissioners to consider as a mechanism to update the Development Code, adding in the opportunities stated in Oregon Revised Statutes 215.780(e).
- Agricultural Policy 6 requires that, “Non-Farm divisions under 160 acres in the County must meet the applicable policies and appropriate criteria and standards in the Development Code.” The applicants are submitting this application to incorporate the changes outlined in ORS 215.780(e) to allow non-farm divisions to separate existing resource dwellings from the large acreage resource land. The proposed amendment would include the applicable policies and criteria as outlined above.
- Agricultural Policy 8 requires that the County shall, “require appropriate procedures/standards/policies be met in the Comprehensive Plan and Development Ordinance when reviewing non-farm uses for compatibility with agriculture.” This request is to allow for the division of land when a parcel contains at least two existing resource dwellings. The requested change would not alter the standard of approval for these non-farm uses (dwellings). The proposed amendment would not allow for the creation of new dwellings.

- Agricultural Policy 11 requires the County to, “Require as part of the matrix review criteria and standards that a "Covenant Not to Sue" document be recorded prior to approval of a non-farm dwelling.” Requiring a Covenant Not to Sue to be signed and recorded in County Deed Records as part of the land division approval process would support this policy.
- Grazing-Forest Policy 8 requires the County to “(a) Require appropriate procedures, standards and policies be met in the Comprehensive Plan and Development Ordinance to assure that non-resource dwellings will be compatible with grazing/forest and farming activities occurring on lands designated Grazing/Forest.” , and “(b) Require a “Covenant Not to Sue” document be signed and recorded prior to the approval of a non-resource dwelling, stipulating that the owner will not remonstrate against accepted farm, grazing and forest practices occurring in areas designated Grazing/Forest.”

The proposed text amendment would allow for the creation of new parcels for dwellings that were lawfully established and in existence since November 4, 1993, therefore, these existing dwellings do not introduce new uses into the area nor alter the current grazing/forest and farming activities that occur in the surrounding areas. Thus, the current grazing/forest and farming activities have continued with the existence of the established dwellings. Requiring a Covenant Not to Sue to be signed and recorded in County Deed Records as part of the land division process will help to support this policy.

Finding: Umatilla County finds that the proposed amendment complies with the provisions of the applicable Umatilla County Comprehensive Plan policies. This criterion is satisfied.

5. CONCLUSION

For the reasons contained herein, the County finds the applicable approval criteria for the text amendment have been satisfied and the proposed text amendment to allow the creation of at least two parcels to serve at least two existing dwellings on land zoned Grazing/Farm as defined in Oregon Revised Statute (ORS) 215.780(e) can be approved.

DATED this ____ day of _____, 20____.

UMATILLA COUNTY BOARD OF COMMISSIONERS

John M. Shafer, *Commissioner*

George L. Murdock, *Commissioner*

Daniel N. Dorran, *Commissioner*

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§ 152.087 PARCEL SIZES.

(E) For existing dwellings on a parcel zoned for mixed farm and forest use.

Creation of a parcel under this division shall meet the following:

(1) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993.

(2) Each dwelling complies with the criteria for a replacement dwelling under UCDC Section 152.083 (O).

(3) The dwellings were not subject to a permit that required removal of the dwelling.

(4) The dwellings were not approved under a provision that prohibited division of the lot or parcel.

(5) The dwellings were not approved under provisions listed in UCDC Sections 152.084 (K) and/or 152.059 (K).

(6) Each parcel created under this section is between two and five acres in size, except for one parcel.

(7) Each parcel created under this section will have one existing dwelling located on the parcel.

(8) The landowner of a parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the parcel has been recorded with the county clerk of the county in which the parcel is located. A restriction imposed under this paragraph is irrevocable unless a statement of release

is signed by the county planning director of the county in which the parcel is located indicating that the comprehensive plan or land use regulations applicable to the parcel have been changed so that the parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

(9) Covenant Not to Sue. All dwellings approved within the mixed farm forest zone require the landowners to sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(10) The resulting parcels shall be added to the County's inventory of parcels that cannot be further divided.

~~(E)~~ (F) *For other non-farm/non-resource and conditional uses.* The minimum lot area for other "non-farm" and "non-resource" uses permitted outright or conditionally in this zone shall be the size necessary to accommodate the use and may be established through § 152.710 (E), Type IV, Review IV Land Division application.

~~(F)~~ (G) *UGB Areas.* Parcels of less than 160 acres in size may be created where portions of the lawfully established parcel are located within the UGB. The new parcels may be established through the §

152.710 (F), Type IV, Review V Land Division application process. (Ord. [83-4](#), passed 5-9-83; Ord. [2008-09](#), passed 6-16-08; Ord. [2013-02](#), passed 1-29-

13; Ord. [2016-02](#), passed 3-16-16;)

PART 5, TYPE IV LAND DIVISION

§ 152.710

(A) *Type IV Land Division review and approval matrix system.* Review and approval of a Type IV Land Division shall be divided into ~~four~~ **six** types of reviews. The following table shall be used to identify what type of review is to be used:

Type of Land Use		Parcel Size to be Created Through a Land Division.	
<i>Creating a Parcel 160 acres +</i>		<i>Creating a Parcel 80 - 160 acres</i>	<i>Creating a Parcel Less Than 80 acres</i>
Continued resource use in EFU Zone	Review I, and the requirements of the Critical Winter Range (CWR) Overlay if applicable	Review II, and the requirements of the CWR Overlay if applicable	Review II if located within an approved “go-below” area per OAR 660-033-0100
Continued resource use in GF Zone	Review I, and the requirements of the Critical Winter Range (CWR) Overlay if applicable	Does Not Apply	Does Not Apply
Non-resource (EFU or GF Zone) new or existing dwelling	Does Not Apply	Does Not Apply	Review III Level I for parent parcels greater than 160 acres and meets the non-farm dwelling criteria, Review III, Level II for parent parcels 40 to 160 acres and meets the non-farm dwelling criteria
Non-resource (EFU or GF Zone) uses other than dwellings	Conditional use permit required first then Review IV	Conditional use permit required first then Review IV	Conditional use permit or land use decision for a Utility Facility allowed under 152.059(C) required first then Review IV
EFU or GF Zone and UGB Parcels	Does Not Apply	Review V if portion of parcel located within UGB.	Review V if portion of parcel located within UGB.
GF Zone - two or more existing dwellings	<u>Does Not Apply</u>	<u>Does Not Apply</u>	<u>Review VI parcels for lawfully existing dwellings.</u>

(G) Review VI.

Criteria for approval of a Type IV, Review VI Land Division application for the creation of parcels for lawfully existing dwellings located on GF Zoned land.

(1) The parcel was lawfully created and at least two dwellings lawfully exist on the lot or parcel prior to November 4, 1993.

(1) Each dwelling complies with the criteria for a replacement dwelling under UCDC Section 152.083 (O).

(2) The dwellings were not subject to a permit that required removal of the dwelling.

(3) The dwellings were not approved under a provision that prohibited division of the lot or parcel.

(4) The dwellings were not approved under provisions listed in UCDC Sections 152.084 (K) and/or 152.059 (K).

(5) Each parcel created under this section is between two and five acres in size, except for one parcel.

(6) Each parcel created under this section will have one existing dwelling located on the parcel.

(7) The landowner of a parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the parcel has been recorded with the county clerk of the county in which the parcel is located. A restriction imposed under this paragraph is

irrevocable unless a statement of release is signed by the county planning director of the county in which the parcel is located indicating that the comprehensive plan or land use regulations applicable to the parcel have been changed so that the parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

(8) Covenant Not to Sue. All dwellings approved within the mixed farm forest zone require the landowners to sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(9) Survey requirements for a Type IV, Review VI, Land Division application will meet the provisions for a partition and follow the technical standards of submittal the same as that for a Type II Land Division, and are therefore subject to §§ 152.681 through 152.683, and §§ 152.685 and 152.686.

(10) Access easements are subject to § 152.684 (E) – (F).

(11) Obtain necessary approval and/or permits from either the State Highway Department or County Public Works Director for location, design, and improvement standards of access points onto County Roads, (approved) public roads, or state highways.

(12) All required improvements have signed agreements with the Board of Commissioners to meet the standards of this chapter or improvements specified by the Planning Commission or Public Works Director, and are recorded in the Recorder's Office at the time, and as a condition of approval for a Type IV, Review VI Land Division.

(13) The resulting parcels shall be added to the County's inventory of parcels that cannot be further divided.

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ORS 215.780 Minimum lot or parcel sizes; land division to establish a dwelling; recordation.

(1) Except as provided in subsection (2) of this section, the following minimum lot or parcel sizes apply to all counties:

- (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;
- (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and
- (c) For land designated forestland, at least 80 acres.

(2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1) of this section in any of the following circumstances:

(a) When the county can demonstrate to the Land Conservation and Development Commission that the county can adopt a lower minimum lot or parcel size while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230.

(b) To divide by partition an area of land zoned for forest use to create a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

(A) The parcel created may not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel may not be larger than 10 acres; and

(B) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(i) Meets the minimum lot or parcel size of the zone; or

(ii) Is consolidated with another parcel, and together the parcels meet the minimum lot or parcel size of the zone.

(c) To divide by partition an area of land zoned for mixed farm and forest use to create a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

(A) The parcel created may not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel may not be larger than 10 acres;

(B) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(i) Meets the minimum lot or parcel size of the zone; or

(ii) Is consolidated with another parcel, and together the parcels meet the minimum lot or parcel size of the zone;

(C) The minimum tract eligible under this paragraph is 40 acres;

(D) The tract must be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321; and

(E) The remainder of the tract does not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(d) To allow a division by partition of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

(A) Are not eligible for siting of a new dwelling;

(B) May not serve as the justification for the siting of a future dwelling on other lots or parcels;

(C) May not, as a result of the land division, be used to justify redesignation or rezoning of resource lands; and

(D) May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:

(i) Facilitate an exchange of lands involving a governmental agency; or

(ii) Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland.

(e) To allow a division by partition of a lot or parcel zoned for forest use or mixed farm and forest use under a statewide planning goal protecting forestland if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.291;

(C) Except for one parcel, each parcel created under this paragraph is between two and five acres in size;

(D) At least one dwelling is located on each parcel created under this paragraph; and

(E) The landowner of a parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the parcel has been recorded with the county clerk of the county in which the parcel is located. A restriction imposed under this paragraph is irrevocable unless a statement of release is signed by the county planning director of the county in which the parcel is located indicating that the comprehensive plan or land use regulations applicable to the parcel have been changed so that the parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

(f) To allow a proposed division of land in a forest zone or a mixed farm and forest zone as provided in ORS 215.783.

(3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record must be readily available to the public.

(4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing dwelling on the lot or parcel was approved under:

(a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under a statewide planning goal protecting forestland.

(5) A county with a minimum lot or parcel size acknowledged by the commission pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under ORS 197.628 to 197.651 that is smaller than those prescribed in subsection (1) of this section need not comply with subsection (2) of this section.

(6)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) and (c) of this section shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. An applicant for the creation of a parcel pursuant to subsection (2)(d) of this section shall provide evidence that a restriction on the newly created parcel has been recorded with the county clerk of the county where the property is located. The restriction may not allow a dwelling unless authorized by law or goal on land zoned for forest use except as permitted under subsection (2) of this section.

(b) A restriction imposed under this subsection is irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.

(c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this subsection. The record must be readily available to the public.

(7) A landowner allowed a land division under subsection (2) of this section shall sign a statement that must be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use. [1993 c.792 §7; 1995 c.700 §1; 1999 c.348 §14; 2001 c.531 §1; 2007 c.143 §3; 2009 c.850 §12; 2013 c.88 §1; 2015 c.104 §6; 2019 c.440 §8]

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Megan Green <megan.green@umatillacounty.net>

Umatilla County PAPA 001-21: Text Amendment to add ORS 215.780(e) Alternative to the Zoning Code

2 messages

Debbaut, Anne <anne.debbaut@state.or.us>

Mon, Mar 22, 2021 at 12:05 PM

To: "Megan Green - Umatilla County (megan.green@umatillacounty.net)" <megan.green@umatillacounty.net>

Hi Megan,

Thank you for the opportunity to review this Plan Amendment to incorporate the provisions of ORS 197.780(2)(e) in the county development code.

It appears that you have included many of the applicable criteria in ORS 215.780, however we are particularly concerned that ORS 215.780(4) and (7) should also be explicitly referenced in the new provisions. Subsection (4) does not allow a county to consider a dwelling that may have been legally established but should have been removed or was established under one of the dwelling tests available in the farm zone (in the latter case a county could have had to determine that the property was predominantly in farm use to apply a farm dwelling test).

Note the statutory language here:

(4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing dwelling on the lot or parcel was approved under:

(a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 (Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325) that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under a statewide planning goal protecting forestland.

(7) A landowner allowed a land division under subsection (2) of this section shall sign a statement that must be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowners successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

Please feel free to get in touch if you have any questions at all. And am glad to set up a quick meeting with our rural specialist if needed to address any concerns.

Regards,

Anne



Anne Debbaut

Portland, Columbia County, and Washington County Regional Representative | Portland Metro Regional Solutions

DLCD

Interim Morrow and Umatilla County Regional Representative | Eastern Oregon Regional Solutions

Oregon Department of Land Conservation and Development

Cell: 503.804.0902 | Main: 503.373.0050

anne.debbaut@state.or.us | www.oregon.gov/LCD



Megan Green <megan.green@umatillacounty.net>

Mon, Mar 22, 2021 at 4:57 PM

To: Robert Waldher <robert.waldher@umatillacounty.net>, Carol Johnson <carol.johnson@umatillacounty.net>

FYI - Maybe we can discuss this tomorrow?

[Quoted text hidden]

--

Megan Green, Planner II / GIS

Umatilla County Department of Land Use Planning

Tel: 541-278-6246 | Fax: 541-278-5480

216 SE 4th Street | Pendleton, OR 97801

<http://www.umatillacounty.net/planning>

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proposal for T-21-084

Andrew Mulkey <andrew@friends.org>
To: Megan Green <megan.green@umatillacounty.net>
Cc: Jasmine Zimmer-Stucky <jasmine@friends.org>

Tue, Mar 23, 2021 at 3:14 PM

Hello Megan,

Please confirm receipt of the attached comments for T-21-084, the proposal to incorporate ORS 215.780(2)(e) into the County's zoning code. Please include the attached comments in the record for these proceedings, and please include me in any future hearing notice, distribution of the staff report, or notice of decision.

Thank you.

Andrew

Andrew Mulkey
Rural Lands Attorney
Pronouns: he/him
[1000 Friends of Oregon](#)
503.497.1000 x138



Support a beautiful, bountiful Oregon for generations to come...join us today!

On Tue, Mar 23, 2021 at 2:40 PM Megan Green <megan.green@umatillacounty.net> wrote:
[Quoted text hidden]

 **20210323_Comments_1000_Friends_215-780_T-21-084.pdf**
107K

proposal for T-21-084

Megan Green <megan.green@umatillacounty.net>
To: Andrew Mulkey <andrew@friends.org>
Cc: Jasmine Zimmer-Stucky <jasmine@friends.org>

Thu, Apr 8, 2021 at 10:49 AM

Hi Andrew,

Planning has received your comments, they will be included in the packets as part of the record.

Attached is the proposed text. A copy has also been provided to Oregon DLCD. Please see provisions 3 through 5.

Thanks,

Megan

[Quoted text hidden]

 **Umatilla County Development Code Update GF Parcels and Type IV LD 4-8-21.pdf**
33K

RECEIVED
MAR 23 2021
UMATILLA COUNTY
PLANNING DEPARTMENT



March 23, 2021

By electronic mail

Umatilla County Board of County Commissioners
c/o Megan Green, Planner
megan.green@umatillacounty.net

Re: T-21-084, proposal by Alan and Nan Heilman to amend UCDC to incorporate ORS 215.780(2)(e).

On behalf of 1000 Friends of Oregon, please accept the following statement for the record in the application to amend the UCDC to incorporate ORS 215.780(2)(e), T-21-084. Please include 1000 Friends in any subsequent notice related to proceedings in this matter and any notice of decision.

The County seeks to adopt and implement ORS 215.780(2)(e) within its zoning code. The proposal must also include provisions to implement ORS 215.780(3) and (4). Subsection (3) requires the planning director to maintain a record of the restrictions of lots that can no longer be divided pursuant to subsection (2)(e)(E). And subsection (4) includes a key limitation on the ability to divide pursuant to (2)(e). A subject property cannot be divided into two parcels, one of which is between 2 and 5 acres if any dwelling was approved under a law that required removal of the dwelling, prohibited subsequent division, or approved pursuant to a farm zone provision. *See* ORS 215.780(4).

To that end, as part of the amendment, the County must explain and adopt policies to comply with ORS 215.780(3). As part of adopting approval criteria in ORS 215.780(2)(e), the County must also adopt criteria to implement ORS 215.780(4). To comply with ORS 215.780(4), 1000 Friends suggests that the County adopt a subsection to the proposed amendments with the following language or similar language:

“Neither dwelling was subject to a permit that required removal of the dwelling,” Neither dwelling was approved under a law that prohibited division of the lot or parcel,” and “Neither dwelling was approved pursuant to a farm use zone provision.”

Conclusion

1000 Friends asks that Planning Department and Board of County Commissioners address these issues before adopting the proposed amendment. I am happy to provide further clarification

of 1000 Friends' concerns with this proposal to the Board or the Planning Director and planning staff.

Sincerely,

A handwritten signature in black ink that reads "Andrew Mulkey".

Andrew Mulkey
Rural Lands Staff Attorney
1000 Friends of Oregon
(503) 497-1000x138
andrew@friends.org

1000 Friends of Oregon is a non-profit organization founded by Governor Tom McCall shortly after the Legislature passed Senate Bill 100, which created the land use planning rules that shape Oregon's communities. Since its founding in 1975, 1000 Friends has served Oregon by defending Oregon's land use system—a system of rules that creates livable communities, protects family farms and forestlands, and conserves the natural resources and scenic areas that make Oregon such an extraordinary place to live. 1000 Friends accomplishes this mission by monitoring local and statewide land use issues, enforcing state land use laws, and working with state agencies and the Legislature to uphold the integrity of the land use system.

DRAFT MINUTES

TEXT AMENDMENT #T-21-084

Amendment of Umatilla County Development Code, incorporating the opportunity to create parcels smaller than 160 acres on Grazing/Farm Zoned land.

**PLANNING COMMISSION HEARING
April 22, 2021**

DRAFT MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, April 22, 2021, 6:30 pm
Umatilla County Courthouse, 216 SE 4th Street, Pendleton, Oregon
Virtual meeting via Zoom

** **

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Don Wysocki, Vice Chair, Tammie Williams, Hoot Royer, Jon Salter, Cindy Timmons & Sam Tucker

ABSENT: Tami Green & Lyle Smith

STAFF: Bob Waldher, Planning Director, Megan Green, Planner II/ GIS & Tierney Cimmiyotti, Administrative Assistant

** ****

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. RECORDING IS AVAILABLE AT THE PLANNING OFFICE

CALL TO ORDER

Chair Danforth called the meeting to order at 6:30 pm and read the Opening Statement.

NEW HEARING

TEXT AMENDMENT #T-21-084, Amendment of the Umatilla County Development Code, incorporating the opportunity to create parcels smaller than 160 acres on Grazing/ Farm (GF) Zoned land. The applicant requests text changes to the Umatilla County Development Code (UCDC) to incorporate the provisions of ORS 215.780(2)(e) to allow for the creation of parcels between two and five acres in size, each to contain an existing dwelling, on land zoned for forest use or mixed farm and forest use (Grazing/Farm, GF). The criteria of approval for amendments are found in UCDC 152.750-152.755.

STAFF REPORT

Megan Green, Planner II/ GIS, presented the staff report. Ms. Green stated that property owners, Nan and Alan Heilman, propose text changes to the UCDC to incorporate the provisions of ORS 215.780(2)(e) to allow for the creation of parcels between two and five acres in size, each to contain an existing dwelling, on land zoned for forest use or mixed farm and forest use (Grazing/Farm, GF). The criteria of approval for amendments are found in Umatilla County Development Code 152.750-152.755.

Ms. Green stated that this is a legislative matter because it proposes to amend the text of the UCDC in a manner that will affect county properties located in the GF Zone within unincorporated Umatilla County. Therefore, the County has the authority to consider and approve the Text Amendment request. She explained that the process of approval by the County involves review by the County Planning Commission with a recommendation to the Board of County Commissioners (BCC). The BCC must also hold a public hearing and make a decision

whether or not to adopt the proposed change to the UCDC. A public hearing before the BCC is scheduled for May 5, 2021 at 9am.

Ms. Green pointed out that the matrix on page 11 of the hearing packet is incomplete. She explained that the BCC adopted a new kind of Land Division under the “Non-resource (EFU or GF Zone) uses other than dwellings” section in January 2021. The box furthest to the right in the matrix should read, “Conditional use permit or land use decision for a Utility Facility allowed under 152.059(C) required first then Review IV”. Ms. Green stated that this update to the language in the matrix has no bearing on this request, she just wanted to ensure all the information in the packet was up to date and accurate.

Ms. Green noted that the following attachments were included in the hearing packets for review; County Preliminary Findings and Conclusions, UCDC Draft Text Amendment, ORS 215.780, Oregon DLCDC email comment and 1000 Friends of Oregon email comment.

Ms. Green explained that she included the complete Oregon Revised Statute section in the packet for review by the Planning Commission. However, the applicant is only seeking approval for a portion of the statute, which is allowed. The only sections of the statute being considered for approval through this request are represented in bold type (ORS 215.780(2)(e), ORS 215.780(4)(a-b) & ORS 215.780(7)).

Commissioner Tucker asked for more information about the recommendations made by 1000 Friends of Oregon. He asked if we have considered making the changes they suggested to the language in order to avoid any issues with possible appeals. Ms. Green stated that we did make the changes 1000 Friends of Oregon suggested, with the exception of adding a Subsection to the proposed amendments with language including, “Neither dwelling was subject to a permit that required removal of the dwelling, neither dwelling was approved under a law that prohibited division of the lot or parcel, and neither dwelling was approved pursuant to a farm use zone provision”. Ms. Green explained that we chose not to adopt that exact language because the statute refers to “at least two dwellings” but does not place a limit the number of dwellings that this could apply to, so the word “neither” does not work well for this provision. She pointed out that the final language can be found on page 10 of the hearing packets under ORS 152.087(2)(e)(3-5).

Commissioner Wysocki asked if there was an estimate on how many parcels would qualify for division if this request were to be approved. Ms. Green stated that in her research she found only 2-5% of properties in the GF Zone would have the ability to qualify for division under this new provision (approximately 30 parcels). Chair Danforth asked if a map has been created to provide a visual representation of affected properties. Ms. Green stated that she did not have a map available but she offered to show her process of coming to this conclusion by assembling a spreadsheet to correlate relevant data. She added that additional research would be required when a new request is made in order to determine that the applicant truly does meet all the criteria for

approval. Therefore, the number of qualifying properties is likely to be even lower than the estimated 30 parcels which have been identified. Chair Danforth asked how many acres of GF Zoned land will be affected by this request. Ms. Green stated that most of the 30 parcels identified are at least 40 acres in size, but some are much larger.

Planning Director, Bob Waldher, added that it would be rare to receive another request like this. He explained that there are very few situations in the GF Zone where multiple dwellings exist on a parcel of this size and still have the ability to partition. It's likely that some dwellings on parcels which appear to qualify as part of staff's preliminary review may have homes that were created through a different approval process, which would disqualify them from this opportunity. Ms. Green stated that in order to qualify the dwelling would have to have been in existence prior to November 4, 1993 and it could not have been approved as a Farm Dwelling or Forest Dwelling. She explained that the dwelling must essentially predate Planning activities in Umatilla County to qualify for this provision.

Commissioner Wysocki asked if there were parameters used to determine if a structure qualifies as a dwelling. Ms. Green stated that ORS 152.087(2)(e)(B) requires that, "[E]ach dwelling complies with criteria for a replacement dwelling under ORS 215.291". To meet this standard the dwelling must be assessed as a dwelling and contain intact walls, a roof structure, connection to a septic system, kitchen sink and heating source.

Applicant Testimony: Alan & Nan Heilman, 77439 Meadowood Road, Weston, Oregon. Mrs. Heilman stated that they would like to divide this parcel so her husband can retire. She said the portion that they keep will be reduced from 40 acres to 35 acres, creating a new five acre parcel with a cabin for sale. The sale of the cabin will allow for them to pay off the loan on the remaining 35 acre parcel of land. Commissioner Williams asked how long the Heilman's family has owned this property. Ms. Heilman stated that they have owned the land since 1992.

Proponent Testimony: Jerry Baker, Real Estate Agent, Coldwell Banker Whitney & Associates, 841 N 4th Street, Athena, Oregon. Mr. Baker represents the applicants. He reiterated that no new dwellings will be created as part of this request.

Opponent Testimony: No comments.

Public Agencies: No additional comments.

Chair Danforth stated that she would like to look at a map and inventory of the affected properties before making a final recommendation. Commissioner Timmons agreed that a map would be helpful. Ms. Green stated that she has a spreadsheet representing affected properties but there is no map available at this time. Commissioner Tucker stated that he feels differently. He stated that his understanding is that this request is about a few parcels of land throughout the county in which two or more dwellings are placed next to each other, and the owners may want to separate the dwelling by creating a new parcel. He believes the impact will be minimal

because it does not allow for the creation of new structures or change the uses allowed. He added that he does not need to know where each eligible parcel is located because it will not change his decision. He sees this as an issue the Planning Commission is able to make a policy decision about without viewing a map of every location.

Ms. Green shared her computer screen and gave details about the spreadsheet she created to determine which properties would be affected. She stated that the GF Zone is spread far throughout the county and a countywide map would not necessarily be useful in demonstrating the impact of this request. Mr. Waldher reiterated that although approximately 30 parcels appear to qualify through preliminary research, they do not all automatically qualify. Additional checks will be done when applications are received to research the history of the specific parcel requested. He added that this extensive research may reveal circumstances in which the applicant does not meet the criteria of approval. As a result, the total number of parcels in the GF Zone that truly qualify for division under this amendment are likely fewer than 30.

Commissioner Williams stated that she agrees with Commissioner Tucker. She stated that she is impressed that staff found a way to navigate this issue and find a solution that works for the land owners without causing harm to any other property and she supports this request.

Chair Danforth closed the hearing for deliberation.

DELIBERATION

Chair Danforth stated that she was surprised that there was not already a way to approve this request under our code as it is written today. She is pleased that approval of this request will create a new opportunity for land owners to do the same thing the Heilmans are requesting to do.

Commissioner Tucker wanted to be sure that staff has done everything possible to accommodate the requests of 1000 Friends of Oregon to avoid appeal. Mr. Waldher stated that he and Ms. Green included all requests with the exception of one. Ms. Green stated that the one thing not added to the language was a recommendation regarding Subsection (3). The email states that, “[t]he proposal must also include provisions to implement ORS 215.780(3) and (4). Subsection (3) requires the Planning Director to maintain a record of the restrictions of lots that can no longer be divided pursuant to Subsection (2)(e)(E).” Ms. Green stated that the Planning Commission can choose to include this requirement in their recommendation if they feel it is appropriate. Commissioner Tucker stated that he thinks we should include the language. Chair Danforth agreed.

Commissioner Tucker made a motion to recommend approval of Text Amendment #T-21-084 as presented, with the addition of Subsection (10) under UCDC Section 152.087(E), "The resulting parcels shall be added to the County's inventory of parcels that cannot be further divided" and the addition of Subsection (13) under UCDC Section 152.710(G), "The resulting parcels shall be

added to the County's inventory of parcels that cannot be further divided.” Commissioner Wysocki seconded the motion. Motion passed with a vote of 7:0.

MINUTES

Chair Danforth called for any corrections or additions to the minutes from the March 25, 2021 meeting. Commissioner Timmons moved to approve the minutes as presented. Commissioner Royer seconded the motion. Motion carried by consensus.

OTHER BUSINESS

Mr. Waldher welcomed our new Planning Commissioner, Sam Tucker, and thanked him for serving. Commissioner Tucker stated that he is honored to serve.

Mr. Waldher announced that Umatilla County has been working on our annual budget for the upcoming fiscal year. Ms. Green will be taking on additional responsibilities as Transit Coordinator funded through a grant. We are also looking to hire one additional full-time Planner to assist with GIS and mapping duties.

Mr. Waldher stated that staff has been working on a project for the last six months to update Umatilla County’s Natural Hazard Mitigation Plan (NHMP). The County included representatives from all twelve cities, as well as four special districts. The NHMP is a document required by the Federal Emergency Management Agency (FEMA) in order to be eligible for natural hazard funding. He explained that the recent flooding throughout the County has made it more apparent that we need to ensure that we are meeting our requirements in order to maintain eligibility. The emergency disaster declarations made after the wildfires last year resulted in approximately \$150 million in funds available to local jurisdictions. However, agencies must have a NHMP updated within the last five years in order to qualify for the funding. This year County staff has worked nearly 300 hours on the project and the plan is currently under review by the Oregon Office of Emergency Management (OEM) & FEMA.

The next Planning Commission hearing is scheduled for Thursday, May 27, 2021 at 6:30pm.

ADJOURNMENT

Chair Danforth adjourned the meeting at 7:29 pm.

Respectfully submitted,

Tierney Cimmiyotti,
Administrative Assistant